

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Boston Division)**

<p><b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>STEVEN E. NOTHERN,</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Civil Action No. 05-CV-10983 (NMG)</b></p>
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**U.S. SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR LEAVE  
TO FILE MEMORANDUM AND SUPPORTING DECLARATION**

Pursuant to Local Rule 7.1(b)(3), plaintiff U.S. Securities and Exchange Commission (“SEC” or “Commission”) hereby moves for leave to file the attached memorandum of law and supporting declaration of John J. Rossetti Jr. in response to defendant Steven E. Nothern’s Objections to Magistrate Judge Sorokin’s January 24, 2007 discovery Order, (Docket # 65). In his Order (Docket # 63), Magistrate Judge Sorokin denied Nothern’s renewed motion to compel the SEC to produce documents from other government agencies, (Docket # 44). Magistrate Judge Sorokin also denied Nothern’s motion for an Order requiring the SEC to show cause why this action should not be dismissed for the United States Department of Treasury’s (“Treasury”) refusal to allow Nothern to depose five additional Treasury employees, (Docket # 49). The SEC seeks to file a response to Nothern’s Objections to address his false assertion that Magistrate Judge Sorokin’s Order contains clearly erroneous findings of fact and legal conclusions that are contrary to law.

On February 20, 2007, counsel for the SEC conferred by telephone with counsel for Nothern regarding the subject of this motion. Nothern consents to the SEC's motion for leave to file the attached memorandum and supporting declaration.

Dated: February 21, 2007

Respectfully Submitted,

/s/ Erica Y. Williams  
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**CERTIFICATION PURSUANT TO LOCAL RULES 7.1(a)(2) AND 37.1**

I, Erica Y. Williams, hereby certify that on February 20, 2007, I conferred with counsel for Nothern and attempted in good faith to resolve or narrow the issues raised in the present motion.

/s/ Erica Y. Williams

Dated: February 21, 2007

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Boston Division)**

**U.S. SECURITIES AND EXCHANGE COMMISSION'S RESPONSE  
TO DEFENDANT STEVEN E. NOTHERN'S  
OBJECTIONS TO MAGISTRATE JUDGE'S ORDER ON DEFENDANT'S RENEWED  
MOTION TO COMPEL AND MOTION FOR AN ORDER TO SHOW CAUSE**

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## INTRODUCTION

The Securities and Exchange Commission (“SEC” or the “Commission”) respectfully submits this response to Defendant Steven E. Nothern’s Objections to Magistrate Judge Sorokin’s January 24, 2007 discovery Order (Docket # 63) denying his renewed motion to compel the SEC to produce documents from other government agencies<sup>1</sup>, which the SEC does not posses or control, and his motion for an order to show cause why the SEC’s complaint should not be dismissed for the Department of Treasury’s decision to deny his request to take the depositions of five current and former Treasury Department employees.<sup>2</sup> Magistrate Judge Sorokin found that the SEC, an independent regulatory agency of the government, does not control Executive Branch departments and held that the SEC was not required under Rule 34 of the Federal Rules of Civil Procedure to produce documents the United States Department of Treasury (“Treasury”) and the United States Department of Justice (“Justice”) as requested by Nothern in his renewed motion to compel. Magistrate Judge Sorokin also rejected Nothern’s claim that the SEC should be held responsible for Treasury’s determination under its *Touhy* regulations to deny Nothern’s requests for the depositions of five Treasury employees, including Treasury’s former general counsel. In denying Nothern’s motions, Magistrate Judge Sorokin correctly noted that Nothern has a full array of valid procedures available to obtain the discovery that he seeks directly from Treasury and Justice, of which he has not taken full advantage. Contrary to the claims raised in Nothern’s Objection, Magistrate Judge Sorokin’s Order was neither clearly erroneous nor contrary to law. Nothern’s Objection lacks merit, and his request that this Court set aside Magistrate Judge Sorokin’s Order should be denied.

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<sup>1</sup> Defendant’s Renewed Motion To Compel Production of Documents (Docket # 44) shall be referred to herein as “renewed motion to compel” and Defendant’s Motion For Order To Show Cause (Docket # 49) shall be referred to herein as “motion to show cause.”

<sup>2</sup> All references to Defendant’s Objections To Magistrate Judge’s Order On Defendant’s Renewed Motion To Compel And Motion For An Order To Show Cause (Docket # 65) will be referred to herein as “Nothern’s Objection” or “Objection.”

### **STANDARD OF REVIEW**

A magistrate judge may hear and determine pretrial motions that are not dispositive of a claim or defense, including discovery motions. *See Fed. R. Civ. P. 72*, 28 U.S.C. § 636(b)(1)(A), Local Magistrate Rule 2(a). A magistrate's resolution in pretrial discovery disputes is entitled to substantial deference. *Dubin v. E.F. Hutton Group Inc.*, 125 F.R.D. 372, 373 (S.D.N.Y. 1989), *see also Anthony v. Abbott Lab.*, 106 F.R.D. 461, 463 (D.R.I. 1985) ("[I]f the magistrate system is to work effectively, magistrates must be given some latitude to exercise judgment and discretion. The district courts should be slow to interfere in everyday decisionmaking [sic], lest the floodgates be rent asunder and the efficacy of the system undermined."). Indeed an order issued by a magistrate judge can be set aside by the district court only if it is "clearly erroneous or contrary to law." *U.S. v. Garcia*, 983 F.2d 1160, 1166 (1st Cir. 1993) (citing 28 U.S.C. § 636(b)(1)(A)). The phrase "clearly erroneous" refers to the magistrate judge's factual findings. *U.S. v. Gioia*, 853 F. Supp. 21, 26 (D. Mass. 1994). A finding is clearly erroneous when a court upon review of the entire evidence "is left with the definite and firm conviction that a mistake has been committed." *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 397 (1948). However, if two interpretations of evidence are permissible then a court's choice of one cannot be clearly erroneous. *U.S. v. Cruz Jimenez*, 894 F.2d 1, 7 (1st Cir. 1990).

Magistrate Judge Sorokin did not make any clearly erroneous findings of fact or judgments that are contrary to law in his Order denying Nothern's renewed motion to compel and motion for order to show cause. He properly denied both motions finding that the SEC made a "powerful" argument that "the SEC neither possesses nor controls documents held by [Executive Branch] agencies within the meaning of Fed. R. Civ. P. 34, and that it does not exert control over the Treasury Department's review of subpoenas seeking testimony from Treasury employees." Docket # 63 at 2, 9.

### **PROCEDURAL HISTORY**

In November 2005, as part of its initial disclosures under Fed. R. Civ. P. 26(a), the SEC provided Nothern with a copy of *all* of the non-privileged documents contained in its

investigative file related to this case. Despite the fact that the SEC had already produced all of the non-privileged documents in its possession, custody and control, on February 17, 2006, Nothern moved to compel the SEC to produce documents from other government agencies, including Justice, Treasury and the Commodity Futures Trading Commission (“CFTC”) in response to his sixty-six requests for production of documents. In an effort to resolve Nothern’s motion to compel without further Court intervention, during a hearing on June 14, 2006, the SEC agreed to ask Justice, Treasury and the CFTC to voluntarily produce documents to both parties in this case in response to narrowed document requests drafted by Nothern.<sup>3</sup> As a result of the SEC’s actions, the parties received hundreds of pages of production from the CFTC and Treasury, and written confirmation from Justice that it did not possess any non-privileged documents responsive to Nothern’s requests. In addition, on December 19, 2006, Treasury provided the parties with a log of documents it was withholding from its production on the grounds of privilege. Docket # 60, Exh. 2. Apparently dissatisfied with the results of the voluntary production from Treasury and Justice, on October 30, 2006 Nothern renewed his motion to compel the SEC to produce documents in the possession of those two Executive Branch departments.

While the parties worked to resolve their disputes regarding the production of documents, they proceeded to take the depositions of potential witnesses. Nothern sought and received permission from Treasury to depose nine current and former Treasury employees, pursuant to regulations promulgated by Treasury pursuant to authority provided by the Supreme Court in *U.S. ex rel. Touhy v. Ragen*, 340 U.S. 462, 468 (1951) (hereinafter referred to as “*Touhy* regulations”).<sup>4</sup> The more Treasury employees Nothern deposed, the more employees he sought

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<sup>3</sup> The SEC first raised this offer of compromise with Nothern before he filed his motion to compel, but he rejected it. *See* Docket #30, Exh. V.

<sup>4</sup> These employees include: Salvatore Antonio Fratto, Frances Anderson, Elizabeth Holahan Schmutz, Roger Anderson, Peter Fisher, Brian Roseboro, Paul Malvey, Jill Ousley and Lula Tyler. In addition, Treasury approved the SEC’s request to depose one former Treasury employee, Steven Vagle, who counsel for Nothern also examined.

to depose. Although Treasury did not play a major role in the facts that give rise to this insider trading case, Nothern increased the number of Treasury employees he wanted to depose to fourteen. Treasury denied Nothern's request to depose five of fourteen Treasury witnesses. The five Treasury witnesses Nothern still seeks to depose include Elnora Bowser, Jill Cetina, Michele Davis, Steve Berardi and former Treasury General Counsel David Aufhauser. Treasury denied Nothern's *Touhy* requests to depose these five additional witnesses on the grounds that the depositions were unnecessary and unduly burdensome, and that the information sought from the witnesses was available from other sources. *See* Docket # 51, Exhs. B, J, N; Docket # 53, Exhs. B, C. Although the SEC was not involved in Treasury's decision to deny Nothern's request for these five additional depositions, on November 17, 2006, Nothern moved for an Order requiring the SEC to show cause why its case should not be dismissed based on Treasury's decision. Additionally, on January 3, 2004, Nothern filed a response (Docket # 62) to the SEC's Notice to the Court on the status of Treasury's privilege log (Docket # 60) in which he challenged Treasury's privilege claims. Because the SEC did not participate in Treasury's privilege review – Treasury also denied the SEC access to its privileged documents – and because the SEC believed that Nothern's response should have been directed to Treasury directly, it declined to file a written response to Nothern's privilege challenge.

#### **FACTUAL BACKGROUND**

Although his renewed motion to compel and motion to show cause present a legal not a factual issue, Nothern uses several pages of his Objection to set forth his inaccurate and twisted recitation of the facts. He then uses these supposed "facts" to argue that the Court should force the SEC to produce documents and witnesses from Executive Branch departments, which it does not control, on the grounds that the documents sought are "critical" to his defense. The following facts, upon which the SEC bases its claims, show that the discovery that Nothern seeks from Treasury and Justice is not only not "central in its importance" to this case, but is arguably irrelevant.

On October 31, 2001, Peter J. Davis Jr., a Washington, D.C.-based consultant, hired by Massachusetts Financial Services Company (“MFS”), attended a refunding press conference at Treasury. Treasury subjected the information released at this conference to an embargo until a specified time.<sup>5</sup> The October 31, 2001 conference was not the first refunding conference attended by Davis. Indeed, he had been attending Treasury refunding conferences for several years “pursuant to an agreement that he had with the Treasury Department that he would abide by the embargo and keep all information disseminated there confidential until the embargo expired.” Docket # 33, Exh. D at 19. Besides Davis, who had an express agreement with Treasury, attendance at the conference was limited to members of the press and select government employees, all of whom were required to be put on a list and cleared into the Treasury building through secret service. *See* February 2007 Rossetti Decl. Exh. A (Fratto dep.) at 156:3-157:12.

“[A]t the beginning of the [October 31] press conference, before the question and answer period, and at the conclusion” of the conference, a Treasury Public Affairs Specialist announced that the information provided at the conference would be embargoed until 10 a.m.<sup>6</sup> *See* Docket # 33, Exh. A at 2. Despite his agreement with Treasury, and the directives he was given by a Treasury employee during the conference to abide by the embargo, as soon as the conference ended, Davis left the Treasury building, and once outside used his cell phone to call a number of

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<sup>5</sup> Prior to October 31, 2001, Treasury had been using an embargo procedure that did not involve a lockdown to protect the confidentiality of information released at its quarterly refunding conferences. *See* February 2007 Rossetti Decl. Exh. A (Fratto dep.) at 62:4-63:3. Treasury officials testified that they were not aware of any time in the thirty years prior to October 31, 2001 where an attendee at any of Treasury’s press conferences had intentionally violated an embargo. *See id.* Exh. A (Fratto dep.) at 62:14-63:2, 111:20-112:4; Exh. B (Malvey dep.) at 120:15-121:5, 122:9-16.

<sup>6</sup> Employees in Treasury’s Office of Public Affairs decided to impose a 10 a.m. embargo for the Treasury refunding conference on October 31, 2001 after consultation with Peter Fisher, Treasury Under Secretary for Domestic Finance. *See* February 2007 Rossetti Decl. Exh. A (Fratto dep.) at 130:22-138:12. Contrary to Nothern’s claims, Mr. Fisher testified that he felt the decision to impose an embargo was “as good a decision” as the Press Office could make, and that he had no regrets about the decision. *See* February 2007 Rossetti Decl. Exh. C (Fisher dep.) at 177:8-179:1.

clients, including Nothern, to notify them about Treasury's decision to cancel the 30-year bond. *See Docket # 33, Exh. D at 21.*

The evidence that the SEC has gathered in this case proves that Davis called Nothern at approximately 9:38 a.m. on October 31 and left a voice-mail message. *See Docket # 33, Exh. F.* Nothern immediately retrieved and listened to the message in which Davis informed Nothern that "Peter Fisher had indicated to Pete Davis that they'd be canceling the long bond and that there would be a press release because it was embargoed until 10 o'clock." *See Docket # 33, Exh. G at 111-112.* Nothern has admitted that he understood that Peter Fisher was a Treasury official in the debt finance area who would have had access to market-sensitive information such as Treasury's decision to suspend or cancel the 30-year bond. *Id. at 116-117.* Nothern has also admitted that when he received Davis' voicemail he was aware of the meaning of the term embargo as it applied to information from government agencies. *Docket # 33, Exh. A*

Immediately after retrieving the voicemail message, Nothern relayed the material nonpublic information that he had received from Davis regarding Treasury's cancellation of the 30-year bond to three other MFS portfolio managers. *Docket # 33, Exh. G at 125-130.* When conveying this information Nothern conveniently neglected to tell the other portfolio managers that the information was embargoed, that Davis advised Nothern he had gotten the information from Peter Fisher, or that a Treasury planned to issue a press release announcing the cancellation of the bond at 10 a.m. *See February 2007 Rossetti Decl. Exh. D (Kurinsky dep.) at 101:24-102:23, 107:18:108:2, 115:22-116:25; Exh. E (Smith dep.) at 138:9-139:18, 141:14-143:1, 202:8-203:10; and Exh. F (Kennedy dep.) at 61:15-63:3, 81:18 84:7.* Nothern then placed an order to purchase \$25 million in par value of the 30-year bond for the portfolios that he managed.

<sup>7</sup> *Docket # 33, Exh. G at 125.* Based on the limited information that they received from

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<sup>7</sup> Although Nothern claims that he had heard a rumor about the cancellation of the bond on the morning of October 31, prior to receiving Davis' voicemail, and that he intended to purchase 30-year bonds for the portfolios he managed when he arrived at work that day, he took no action to purchase the bonds until after he received the material nonpublic information about the bond's

Nothern, the three other portfolio managers also placed orders to purchase 30-year bonds for the portfolios they managed. *See* Docket # 33, Exh. H at 135-136, Exh. I at 76-77, and Exh. J at 79-82. In total, the amount of bonds purchased by Nothern and the three other portfolio managers equaled \$65 million in par value. *See* Docket # 33, Exh. G at 128. Records from Merrill Lynch, the broker executing the trade, indicate that Nothern and the three other portfolio managers authorized an MFS trader to place the order for the \$65 million in bonds, and that the trader verbally confirmed the telephone order for the bonds with Merrill Lynch prior to 9:42 a.m. *See* Docket # 33, Exh. K. At 9:43 a.m., Treasury inadvertently posted a press release on its website announcing that it was canceling issuance of the 30-year bond. *See* Docket # 30, Exh. L.<sup>8</sup> The price and volume data on the 30-year bond from October 31, 2001, testimony from numerous witnesses, and many of the documents produced in this litigation, show that the information that Nothern used to trade was nonpublic at the time he placed his trade order,<sup>9</sup> and did not become

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cancellation from Davis. *See* February 2007 Rossetti Decl., Exh. G (Nothern Jan. 30, 2007 dep.) at 163:7-165:15, 176:15-18.

<sup>8</sup> Merrill Lynch, the counterparty to Nothern's purchase order of \$65 million par value 30-year bonds, utilized a Trade Order Management System ("TOMS") maintained by Bloomberg. According Bloomberg's records, the Merrill Lynch bond trader first entered the trade into TOMS at 9:42:02. *See* February 2007 Rossetti Decl. Exh. H. According to Galen Criqui, the Merrill Lynch bond trader for this transaction, after he verbally confirmed that the trade was "done", or executed, he "soon thereafter, but not immediately" "slated" or entered the trade information into TOMS. *See* February 2007 Rossetti Decl. Exh. I (Criqui dep.) at 184:2-187:23. Thus, Nothern's trade order had to have been placed sometime prior to 9:42:02. Evidence developed during discovery confirms that the time of the trade recorded in the TOMS, 9:42:02, and the time recorded on Treasury's production server, 9:43:28, indicating when the October 31 press release was posted to the Treasury website, were both synchronized via Network Time Protocol, an ubiquitous time synchronization computer program, to atomic clocks maintained by the United States Naval Observatory and the National Institute of Standards and Time. *See* February 2007 Rossetti Decl. Exh. J (Verizon Business (Anne Wilson) dep.) at 84:9-85:14; Exh. K (Bloomberg L.P. (Darin Langone) dep.) at 31:2-19. As a practical matter, Treasury's press release could not be viewed by the public on its website prior to the posting on its production server at 9:43:28. *See* February 2007 Rossetti Decl. Exh. J (Verizon Business (Anne Wilson) dep.) at 81:12-22, 180:17-181:10, 199:20-200:11.

<sup>9</sup> Contrary to Nothern's assertions, there is no evidence that Treasury's decision to cancel the 30-year bond became public prior to the time that Nothern traded in the bond. Nothern maintains

public until sometime close to 10 a.m. after it was released on the news wires.<sup>10</sup> See Docket # 30, Exh. K.

On September 3, 2003, Davis pleaded guilty to criminal charges resulting from the actions that he took to disclose Treasury's decision to cancel the 30-year bond to clients during the embargo period.<sup>11</sup> Davis has admitted that he knew that "the information disseminated in the press conference was embargoed by Treasury officials, such that it could not be published or divulged before a specific time shortly after the press conference concluded." Docket # 33, Exh. D at 19. He has also admitted that he violated his duty to Treasury to keep the information that he heard at the Treasury's October 31, 2001 refunding press conference confidential until the

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that Treasury leaked the information prior to October 31 to a trader at Lehman Brothers, a European central bank, and White House officials. Not surprisingly, Nothern has never attempted to take the testimony of any representatives from Lehman Brothers, European central banks or the White House to obtain admissible evidence to corroborate his groundless assertion of leaks. The only source that Nothern references to support these baseless allegations is the summary of an interview with Treasury employee Jill Cetina. Far from corroborating Nothern's claim of leaks, Ms. Cetina stated that she had heard "speculation" from a bond strategist "a week or two" prior to the announcement and that she thought the strategist was "going out on a limb with that type of speculation." February 2007 Rossetti Decl. Exh. L at 2. Speculation in the market is not out of the ordinary. Numerous witnesses in this case, including Nothern, have testified that rumors of the possible cancellation of the 30-year bond had been circulating for years. See February 2007 Rossetti Decl. Exh. G (Nothern dep.) at 168:10-170:21, Exh. D (Kurinsky dep.) at 114:3-115:6, Exh. F (Kennedy dep.) at 77:18:79:15, and Exh. E (Smith dep.) at 143:18-144:1, 165:9-166:14.

<sup>10</sup> Nothern's claim that Brian Collins, a reporter from *National Mortgage News*, leaked information about the cancellation during the embargo period is untrue. Mr. Collins testified that he did not disclose the information to anyone in the public prior to approximately 9:50 a.m. on October 31 – long after Nothern traded, after it was placed on Treasury's website, and after Nothern claims the information was publicly released by Reuter's news service. February 2007 Rossetti Decl. Exh. M (Collins dep.) at 67:9-68:2.

<sup>11</sup> Davis pleaded guilty in the U.S. District Court for the Southern District of New York to a three-count criminal information charging him with: (1) Conspiracy to Defraud the United States, Convert Property of the United States, Commit Fraud in Connection with the Sale of Securities, and Wire Fraud; (2) Conversion of Property of the United States; and (3) Securities Fraud. See Docket # 33, Exh. D at 22-24. On March 18, 2005, the Court sentenced Davis to two years probation and a \$30,000 fine. See Docket # 33, Exh. E at 14.

embargo expired by calling clients that he thought might have an interest in the information so that they could “make significant moves in advance of the market responding to the official public release,” which is exactly what Nothern did in this case. *Id.* at 21.

Now Nothern is attempting to impair the SEC’s ability to litigate its securities fraud claims against him by requiring the SEC to produce documents and witnesses from Executive Branch departments, which the SEC does not control. Magistrate Judge Sorokin properly denied Nothern’s motions. His Order should be upheld.

## ARGUMENT

**A. The Law Does Not Require The SEC To Obtain And Produce Documents Of Other Government Departments Nor Does It Require The SEC To Produce Employees of Other Government Departments For Testimony In Response To Nothern’s Discovery Requests.**

This case was filed on behalf of the SEC, not the entire United States government.<sup>12</sup> As Magistrate Judge Sorokin noted, it is undisputed that the SEC is comprised of five Commissioners who are appointed by the President for fixed terms which do not lapse at the same time, and are not subject to removal or discipline by the President. Docket # 63 at 10. Unlike Executive Branch departments, like Treasury and Justice, the SEC is an independent regulatory agency of the government, and is essentially free from the control of the government’s Executive Branch. *See U.S. v. American Tel. & Tel. Co.*, 461 F. Supp. 1314, 1335-1336 (D.D.C. 1978) (“AT&T”).

The proposition upon which Nothern’s renewed motion to compel and his motion to show cause are based – that Executive Branch departments of the federal government become

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<sup>12</sup> Contrary to Nothern’s allegations, the SEC’s Division of Enforcement Staff (“Staff”) conducted the SEC’s investigation of this matter independent of any limited investigation being conducted by Treasury and Justice. *See* Docket # 33, ¶ 2. Similarly, the decision to bring this action, and all other SEC actions, that resulted from the SEC’s investigation into trading in the 30-year bond rested solely on the SEC. Nothern’s claim that the SEC brought this action for any reason other than to enforce the federal securities laws, especially his ridiculous claim that this action was filed to “deflect[] critical attention” away from Treasury, should not be credited. Objection at 13.

plaintiffs to an action filed by the SEC – is contrary to law, and raises serious constitutional, and separation of powers, concerns. As Magistrate Judge Sorokin observed, the only case cited by the parties that squarely addresses the issue of whether an independent government agency, such as the SEC, can be compelled to produce documents held in the possession of Executive Branch departments under Rule 34 of the Fed. R. Civ. P. is *AT&T*, which rejected the very legal arguments Nothern asserts in his motions and in his Objection.<sup>13</sup>

Justice filed *AT&T* on behalf of the United States. Although the United States was listed as the plaintiff in the action, the Court found that the plaintiff did not include all agencies and departments of the United States government and denied the defendants' motion to compel Justice to produce document contained in the files of the Federal Communications Commission ("FCC") and other independent regulatory agencies. Specifically, the court held that "there is no basis for holding that a quasi-legislative agency, which the law necessarily regards as an independent body created to execute independent responsibilities, becomes a 'plaintiff' when the Department of Justice chooses to file a lawsuit on behalf of the United States." *Id.* at 1335. The court noted that while Justice and other the departments of the Executive Branch could be considered to be plaintiffs because of the "peculiar facts" of the case "which involve[d] many departments and their evidence," independent regulatory agencies could not. *Id.* at 1334-1335. The court also found that "the plain fact is that a party cannot produce that which it does not have . . . [and] in a very real, practical sense, [an independent regulatory agency's] documents are not in the control of either the Department of Justice or the Executive Branch." *Id.* at 1335. Moreover, the court concluded that to hold an independent regulatory agency of the government to be a plaintiff in the case for purposes of Rule 34 "would not only contradict over forty years of legal history, but would effectively leave the conduct of this lawsuit, and perhaps of other actions brought by the government vulnerable to a virtual veto by one or more independent regulatory

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<sup>13</sup> In *AT&T* the court noted that "there is a paucity of authority on this issue in the area of civil litigation, and there certainly has been no instance of discovery being sought or required on as broad a scale, involving as many departments of government as in this case." 461 F. Supp. at 1333.

agencies.” *Id.* at 1336. Although *AT&T* involved a motion to compel the production of documents from government agencies, its holding is equally applicable to the production of testimony.

In his Objection, Nothern attempts, unsuccessfully, to spin the holding in *AT&T* in his favor by claiming that it allows the Court to ignore the independent status of the SEC, the agency that filed this lawsuit, and ignore the fact that the SEC cannot control Executive Branch departments, and nonetheless find that Treasury and Justice are plaintiffs in this case because they are subject to the control of the President. Objection at 17. This flawed interpretation of *AT&T* must be rejected. Nothern bases his reading of *AT&T* on his erroneous assertion that the Executive Branch is “the branch of the government whose interests the SEC is advancing with this lawsuit.” Objection at 17. The SEC is an independent agency of the government charged with enforcing the federal securities laws. To the extent the SEC advances any interests, it is the interests of investors. The SEC is not controlled by the President, or any other Executive Branch department or agency. Indeed, as an independent regulatory agency, the SEC was “intentionally created to be somewhat apart from the government, in general, and from the White House in particular.” *Id.* at 1335.

The holding in *AT&T* makes clear that independent government agencies and Executive Branch departments are separate and distinct entities which do not control each other’s documents. Docket # 63 at 9-10. The focus of the Court in *AT&T* was not the status of the agencies the defendants were trying to compel, but the status of those agencies in relation to the named plaintiff, Justice. The Court reasoned that because Justice had filed the action on behalf of the Executive Branch, it could therefore find that other Executive Branch departments were plaintiffs to the action for purposes of Rule 34. The Court, however, determined that the defendants could not obtain discovery from the FCC, an independent agency, pursuant to Rule 34 because it was not a plaintiff to the action. Magistrate Judge Sorokin properly found that “[t]hough some circumstances distinguish this case from *AT&T*, those distinctions are not

material” and correctly concluded that the SEC does not control Treasury and Justice. Docket # 63 at 10.

The other case that has addressed the issue of whether an Executive Branch agency can be found to be a plaintiff for purposes of discovery in an action filed by the SEC supports the SEC’s position. In *SEC v. Biopure*, No. 05-00506, 2006 WL 2789002, at \*4 (D.D.C. Jan. 20, 2006), the U.S. District Court for the District of Columbia “found no support for Biopure’s proposition that because the SEC [Government] is a party, then other branches of Government, such as the FDA [an Executive Branch agency] should also be treated as a party.” *Id.* at, \* 4. <sup>14</sup> See generally *Sec v. Selden*, No. 05-0476 (RMU), 2006 WL 2374796, at \*1-2 (D.D.C. Aug. 16, 2006) (involving an SEC enforcement action filed in the District of Massachusetts in which the defendant who was seeking documents and testimony from the FDA during discovery served Rule 45 subpoenas on the FDA rather than pursing the discovery through the plaintiff SEC). <sup>15</sup>

In his Objection, Nothern also relies on the holdings in *Harvey Aluminum Inc. v. NLRB*, 335 F.2d 749 (9th Cir. 1964) (“*Harvey*”) and *Ghana Supply Commission v. New England Power Co.*, 83 F.R.D. 586 (D. Mass. 1979) (“*Ghana*”), but neither case supports his argument that the SEC is obligated to produce documents and witnesses from Executive Branch departments in response to his discovery requests.

Surprisingly, Nothern admits that *Harvey* does not serve as authority for the SEC’s duty to produce documents from other government agencies. Objection at 16. He correctly notes that

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<sup>14</sup> The Court also did not accept the defense’s argument, which is similar to arguments raised by Nothern in this case, that the FDA should be considered a plaintiff because it had provided “substantial assistance” to the SEC. *Id.* at, \*4.

<sup>15</sup> See e.g. *U.S. v. Davis*, 140 F.R.D. 261, 263 (D.R.I. 1992) (rejecting defendant’s claim that a subcommittee of the U.S. House of Representatives became plaintiffs to the action for purposes of Rule 34 in an action filed by Justice on behalf of the United States); *In re Air Crash at Dallas/Forth Worth Airport on Aug. 2, 1985*, 117 F.R.D. 392, 393 (N.D. Texas 1987) (denying a motion to compel the United States to produce documents contained in the files of the National Transportation Safety Board in response to a Rule 34 document request on the grounds that the NTSB functions as “an entirely autonomous entity, not subject to any other executive agency.”)

the SEC's obligation arises from Rule 34 of the Fed. R. Civ. P., which only requires parties to produce documents within their possession, custody or control. *Id.* Where Nothern misses the mark in his analysis of the *Harvey* opinion is when he claims that because the Ninth Circuit in *Harvey* required the NLRB to produce witness statements from Executive Branch agencies in an adjudicatory hearing before the Board, based on the principles underlying *Jencks v. United States*, 353 U.S. 657 (1957), the SEC in this federal court action should be required to obtain and produce not only witness statements, but *all documents* from Executive Branch departments that are responsive to his sixty-six document requests.

As Magistrate Judge Sorokin correctly concluded, “[t]his case is materially different from *Harvey*.” Docket # 63 at 11. In *Harvey* the Ninth Circuit based its opinion in part on a statute, 29 U.S.C.A. § 161 (b), that provided for the Board to obtain documents from other government agencies upon request by the Board at the direction of the President. No such statute exists to allow the SEC to obtain the documents that Nothern seeks from Treasury and Justice.<sup>16</sup> Furthermore, in stark contrast to the facts of *Harvey*, in this case Nothern is not seeking production of witness statements that are central to this case, which he cannot obtain through any other means. He is seeking to compel the SEC, to obtain and produce documents from Executive Branch departments in response to sixty-six Rule 34 document requests, which the SEC does not possess or control. The Court in *AT&T* distinguished the holding in *Harvey* for this very reason finding that the Ninth Circuit “was essentially concerned with Jencks Act statements in the possession of executive departments.” 461 F. Supp. at 1336, n. 63.

While counsel for Nothern failed to even mention *Ghana* during oral argument on the motions at issue, he now criticizes Magistrate Judge Sorokin’s Order for failing to discuss the

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<sup>16</sup> Nothern contends that Treasury’s and Justices’ *Touhy* regulations do not apply to the SEC. Docket # 29 at 14, Objection at 14. Nothern’s contention is incorrect. Although the *Touhy* regulations provide a mechanism for other government agencies or government officers acting in their “official capacity” to request information without complying with all of the *Touhy* regulations, as Magistrate Judge Sorokin found, they do not confer any legal obligation on the part of Treasury or Justice to release the documents or witnesses to the SEC. Docket # 63 at 13.

*Ghana* decision. Magistrate Judge Sorokin did not need to discuss the holding in *Ghana* in his Order denying Nothern's motions because *Ghana* has no bearing whatsoever on this case. In *Ghana* the Court did not address, let alone decide, the issue of whether an independent regulatory agency is obligated under Rule 34 to produce documents from other government agencies. The Court found that when the entire Republic of Ghana filed suit through one of its agencies, the Ghana Supply Commission, pursuant to Massachusetts state law, it waived the right to claim governmental privilege except as to documents that contained "military or diplomatic secrets." *Id.* at 593. Accordingly, the Court held that the Republic of Ghana was required to make available all information relevant to the defense that was in the possession, custody or control of the Ghanaian government and could not allow particular agencies to withhold documents "solely on the claims of intragovernmental or executive privilege." *Id.* at 595.

This case differs materially from *Ghana*. This action was filed on behalf of the SEC, an independent regulatory agency, not the entire United States government. The SEC is not objecting to producing documents from Executive Branch departments on the basis of government privilege – its objection rests on the fact that the documents Nothern seeks are outside of the SEC's possession, custody and control.

**B. Nothern's Due Process Argument Must Be Rejected Because He Has Failed To Take Advantage Of Established Procedures To Obtain The Discovery He Seeks.**

This is not a case where Nothern has been denied, or risks being denied, due process. Magistrate Judge Sorokin correctly noted that "Nothern retains the full range of discovery options available to him pursuant to Rule 45 [of the Federal Rules of Civil Procedure] (which controls discovery directed to non-parties) and which, as Nothern concedes, now include the ability to serve Rule 45 subpoenas upon the government itself." Docket #63 at 11. To date Nothern has not served a single Rule 45 subpoena on either Treasury or Justice, nor has he served them with any requests for documents pursuant to their *Touhy* regulations. While Nothern served both Treasury and Justice with FOIA requests, he has not utilized all of the procedures available

to challenge the denial of his requests, or those agencies' privilege assertions, which includes filing a FOIA lawsuit in United States District Court. Further, although Nothern claims that he is willing to file an action under the Administrative Procedures Act, to challenge Treasury's denial of his request to depose the five additional Treasury employees at issue in his motion to show cause, he has failed to do so. *See Houston Business Journal, Inc. v. Office of Comptroller of Currency, U.S. Dept. of Treasury*, 86 F.3d 1208, 1212 n.4 (D.C. Cir. 1996).

Nothern's attempts to justify his failure to pursue discovery through Rule 45 and other alternatives are unpersuasive. Nothern claims that this Court should set aside Magistrate Judge Sorokin's Order and make the unprecedented finding that Treasury and Justice became plaintiffs to this action when it was filed by the SEC because it may be "cumbersome and time-consuming" for him to obtain documents from these Executive Branch departments through established alternative means. Objection at 19-20. As stated above, Nothern's claims that the Executive Branch is a party to this action, or that the SEC controls the Executive Branch and its departments are not supported by law. Moreover, any logistical problems or delay Nothern faces in trying to compel Executive Branch departments to produce documents, the SEC also faces. The SEC does not control Treasury or Justice, has no access to their buildings or files, and cannot, contrary to Nothern's naïve and unsupported contention, simply demand and receive documents from these departments. *See Docket # 63 at 13.* If Treasury and Justice refuse to produce requested documents and witnesses to the SEC, it would have to seek court redress as well.

Nothern's reliance on *AT&T* and *Harvey* to support his assertion that that he should not be required to pursue the discovery through Rule 45 subpoenas, FOIA and the APA is misplaced. Just like the defendants in *AT&T* had to use alternative discovery means to obtain documents from the FCC, a non-party independent government agency, Nothern should be required to utilize established procedures to obtain the discovery he is seeking from Treasury and Justice. Additionally, *Harvey* differs from this case in several material respects, not the least of which is that in *Harvey* the defendants attempted to obtain witness statements through motions and

*subpoenas duces tecum* and failed, thereby leaving, as Magistrate Judge Sorokin correctly found, “no alternative avenue for obtaining the reports.” Docket # 63 at 11. *See also Harvey*, 335 F.2d at 752. Here, Nothern has made little to no attempt to seek discovery through alternative means, choosing instead to spend more than a year trying to force the SEC to produce documents from Executive Branch agencies which it does not have and does not control.

Nothern has limited himself by refusing to take advantage of established procedural methods put in place that would allow him to pursue the discovery he seeks from Treasury and Justice. In doing so, he has unfairly delayed the discovery process in this case and impeded the SEC’s ability to prosecute its claims against him. The Court should counsel no further delay, and uphold Magistrate Judge Sorokin’s Order denying Nothern’s motion to show cause and his renewed motion to compel production of documents from other government agencies.

**C. Magistrate Judge Sorokin Correctly Found That The Evidence Nothern Seeks Is “Not As Central In Its Importance” To This Case.**

In reaching his legal conclusions in his January 24, 2007 Order, Magistrate Judge Sorokin correctly observed that the discovery that Nothern is seeking is “not as central in its importance to this case,” and that Nothern had already “obtained substantial information concerning the disputed issues” as a result of the SEC’s production and voluntary efforts to help him to obtain voluntary discovery from Treasury, Justice and the CFTC. Docket # 63 at 12. Indeed, Nothern has already taken the depositions of nine Treasury employees and received countless documents related to the very information that he claims is “critical” to his defense, such as: (1) Treasury decision to suspend the 30-year bond, (2) Treasury’s policies and procedures related to embargos, (3) Treasury’s effective use of the embargo procedure on October 31, 2001, (4) Peter Davis’ admission to the October 31, 2001 Treasury refunding conference, (5) the posting of the press release on Treasury’s website at 9:43 a.m. on October 31, 2001. Docket # 53, Exhs. B, C. (containing citations to the depositions of current and former Treasury employees, Salvatore Antonio Fratto, Frances Anderson, Elizabeth Holahan Schmutz, Roger Anderson, Peter Fisher,

Brian Roseboro, Paul Malvey, Jill Ousley and Lula Tyler). Magistrate Judge Sorokin's determination as to the limited importance of the discovery that Nothern seeks from Treasury and Justice is entitled to substantial deference. *Dubin v. E.F. Hutton Group, Inc.*, 125 F.R.D. at 373.

Even if Magistrate Judge Sorokin's factual observation regarding the importance of the discovery sought by Nothern in the motions at issue was erroneous – which it was not – it was but one of several observations he relied on in reaching his decision to deny Nothern's motion to compel and motion to show cause. Nothern's contention that the Magistrate Judge's decision should be set aside because he was not persuaded by Nothern's claim that the information he seeks from Treasury and Justice is of much importance to this case should be rejected. The relative importance of the information that Nothern is seeking to compel the SEC to produce from Treasury and Justice has no bearing on the SEC's ability to control those Executive Branch agencies, their documents, or their decisions to produce their employees for testimony. If Nothern believes the information he is seeking is important, he is free to utilize the established procedures that exist for obtaining that information from Treasury and Justice directly, such as Rule 45, FOIA, the *Touhy* regulations and the APA.

**D. Nothern's Claim That The SEC Has Engaged In Action That Warrants Dismissal Of This Case Is Baseless And Should Be Rejected.**

In an effort to convince the Court that the SEC should be held responsible for the actions of Executive Branch departments, Nothern spends several pages of his Objection attempting to defend the validity of his challenges to Treasury's and Justice's privilege assertions and his request to depose five additional current and former Treasury employees. The SEC, however, was not involved in any decisions by Treasury or Justice to withhold documents from their productions on the basis of privilege. Like Nothern, the SEC has also been denied access to those privileged materials. While the SEC may agree with Treasury's decision that many of the depositions that Nothern seeks are unnecessary and unduly burdensome, it did not participate in

the decision, and has no ability to overturn it. 31 C.F.R. §§ 1.8 – 1.12.<sup>17</sup> To the extent that Nothern wishes to challenge Treasury's and Justice's privilege assertions and Treasury's application of its own *Touhy* regulations, Magistrate Judge Sorokin properly found that he should apply directly to those departments to do so, rather than going through the SEC. Docket # 63 at 12.

Even if Treasury's denial of Nothern's request for five additional depositions, and the privilege assertions made by Treasury and Justice could be imputed to the SEC – which they cannot - Nothern's claim that Treasury's and Justice's actions warrant an order to show cause, and the possible dismissal of the SEC's lawsuit case is without merit. Dismissal of a plaintiff's action, especially dismissal with prejudice, is typically reserved for cases in which the plaintiff has shown continued deliberate disregard for court orders and procedures, and been forewarned of the consequences of continued non-compliance.<sup>18</sup> Indeed, the First Circuit has found that dismissal of an action with prejudice "is strong medicine, not casually to be dispensed . . ." *Tower Ventures Inc. v. City of Westfield*, 296 F.3d 43, 46 (1st Cir. 2002). Even the cases that Nothern cites in support of his motion to show cause are limited to circumstances in which plaintiffs failed to abide by court discovery orders after receiving warnings of the likely consequences of such action. *See Young v. Gordon*, 330 F.3d 76, 81 (1st Cir. 2003) (upholding

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<sup>17</sup> Nothern criticizes the SEC for not asking Treasury to reconsider its denial of his request for depositions. His criticism is misplaced especially in light of the fact that prior to filing his motion to show cause Nothern never sought reconsideration of Treasury's decisions. He can hardly blame the SEC for not taking action that he refused to take himself.

<sup>18</sup> *See Marx v. Kelly, Hart & Hallman, P.C.*, 929 F.2d 8, 10 (1st Cir. 1991)(upholding dismissal of an action after the plaintiff evidenced a deliberate pattern of delay and disregard for court orders and finding that "dismissal with prejudice is a harsh sanction which runs counter to our strong policy favoring the disposition of cases on the merits."); (citations and internal quotations omitted); *Angulo-Alvarez v. Aponte de la Torre*, 170 F.3d 246, 252 (1st Cir. 1999)( finding that a court may dismiss an action where "a noncompliant litigant has manifested disregard for orders of the court and been suitably forewarned of the consequences of non-compliance"); *Serro-Lugo v. Consortium-Las Marias*, 271 F.3d 5, 6 (1st Cir. 2001)(holding that the district court acted within its discretion in dismissing an action after the plaintiff repeatedly violated court orders and had been warned of the consequence of non-compliance).

dismissal after plaintiff was “forewarned of noncompliance, [and] failed to abide by a court order); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 640-43 (1976) (upholding dismissal of action after plaintiffs exhibited “flagrant bad faith” by failing to substantially answer interrogatories after receiving numerous extensions from the court and after “several admonitions by the Court”); *Tower Ventures, Inc. v. City of Westfield*, 296 F.3d at 45 (finding that dismissal of plaintiff’s action was appropriate where plaintiff’s counsel engaged in “serial violations of the court’s scheduling order”).

The actions take by the SEC, Treasury and Justice do not warrant an order to show cause or dismissal of the SEC’s case. The Court has not issued any orders against the SEC, or any other government agency, in this action. Moreover, the SEC, having asserted what it believes is a valid legal argument that it does not control Executive Branch departments, has not refused to comply with any court procedures.

Notably, Nothern does not specifically allege any wrongdoing on the part of the SEC, instead he reserves most of his critique for Treasury, which also has not violated any Court orders, or engaged in any wrongdoing in this case.<sup>19</sup> During discovery in this case, Treasury expended hundreds of hours, and hundreds of thousands of dollars voluntarily producing documents responsive to Nothern’s requests, helping to arrange depositions of current and former Treasury employees, attending depositions involving Treasury employees in New York, Florida and New Jersey, and considering Nothern’s fourteen requests for depositions of current and former Treasury employees pursuant to Treasury’s *Touhy* regulations – nine of which were granted. Docket # 51, Exh. J. Treasury’s actions contradict Nothern’s claim that it has refused to

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<sup>19</sup> Nothern is clearly attempting to turn this into a case about Treasury in an effort to deflect attention from his own bad acts. This case is not about mistakes made by Treasury. It is about Nothern’s violations of the federal securities laws. Indeed, this Court has already found that any misconduct on behalf of Treasury does not create a valid defense to the SEC’s insider trading claims in this case. *See* Memorandum and Order dated November 4, 2005 at 10-11 (Docket # 25).

cooperate with his discovery requests or has engaged in any action that warrants dismissal of this case.

### CONCLUSION

If Nothern's renewed motion to compel and motion to show cause are granted, the SEC will be put into a dangerous position of risking dismissal of this lawsuit based on the actions of Executive Branch departments that the SEC does not control. In addition, a finding that Treasury and Justice are party plaintiffs to this action will challenge the independent status of the SEC and raise serious separation-of-powers problems. *See U.S v. AT&T*, 461 F. Supp. 1314, 1335, n.62 (D.D.C. 1978) (noting that in view of the quasi-legislative status of independent agencies, a requirement that those agencies be considered a party in an action filed by the Executive Branch "might well raise serious constitutional separation-of-powers problems"). If the Court upholds Magistrate Judge Sorokin's decision to deny Nothern's motions, the SEC will be able to promptly proceed with its mission to enforce the federal securities laws in this action without raising separation-of-powers concerns and without impairing Nothern's due process rights, or his ability to obtain the documents that he seeks from Treasury and Justice directly.

For all of the foregoing reasons, the SEC respectfully requests that the Court reject Nothern's Objections to Magistrate Judge Sorokin's January 24, 2007 discovery Order.

Dated: February 21, 2007

Respectfully Submitted,

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Boston Division)**

UNITED STATES SECURITIES AND )  
EXCHANGE COMMISSION, ) Civil Action No. 05-CV-10983 (NMG)  
Plaintiff, )  
v. )  
STEVEN E. NOTHERN, )  
Defendant. )

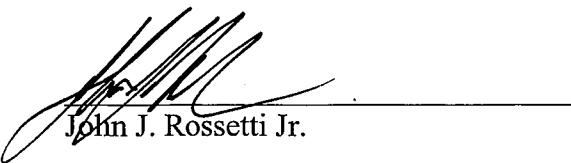
**DECLARATION OF JOHN J. ROSSETTI JR. FILED IN SUPPORT OF  
U.S. SECURITIES AND EXCHANGE COMMISSION'S RESPONSE  
TO DEFENDANT STEVEN E. NOTHERN'S  
OBJECTIONS TO MAGISTRATE JUDGE'S ORDER ON DEFENDANT'S RENEWED  
MOTION TO COMPEL AND MOTION FOR AN ORDER TO SHOW CAUSE**

John J. Rossetti Jr., pursuant to 28 U.S.C. § 1746, declares under the penalty of perjury as follows:

1. I am a senior counsel for the Securities and Exchange Commission in the above-captioned matter. I am a member of good standing of the New York, Maryland, and District of Columbia bars. Except where otherwise indicated, I make this declaration based upon the documents thus far produced during discovery.
2. A true and correct excerpt from the August 30, 2006 deposition of Salvatore Antonio Fratto is attached as Exhibit A.
3. A true and correct excerpt from the June 23, 2006 deposition of Paul Malvey is attached as Exhibit B.

4. A true and correct excerpt from the August 8, 2006 deposition of Peter Fisher is attached as Exhibit C.
5. A true and correct excerpt from the September 7, 2006 deposition of Geoffrey Kurinsky is attached as Exhibit D.
6. A true and correct excerpt from the June 19, 2006 deposition of David Smith is attached as Exhibit E.
7. A true and correct excerpt from the June 26, 2006 deposition of David Kennedy is attached as Exhibit F.
8. A true and correct excerpt from the January 30, 2007 deposition of Steven Nothern is attached as Exhibit G.
9. A true and correct excerpt of Exhibit 3 from the November 2, 2006 deposition of Bloomberg LP, by Patrick Eldridge, is attached as Exhibit H.
10. A true and correct excerpt from the September 27, 2006 deposition of Galen Criqui is attached as Exhibit I.
11. A true and correct excerpt from the October 6, 2006 deposition of Verizon Business, by Anne Wilson, is attached as Exhibit J.
12. A true and correct excerpt from the November 3, 2006 deposition of Bloomberg LP, by Darin Langone, is attached as Exhibit K.
13. A true and correct copy of a Memorandum of Activity concerning the Treasury Office of Inspector General's November 7, 2001 interview of Jill Cetina is attached hereto as Exhibit L.
14. A true and correct excerpt from the May 12, 2006 deposition of Brian Collins is attached as Exhibit M.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on  
February 20, 2007.



John J. Rossetti Jr.

**EXHIBIT A**

**Cited Excerpts from the Deposition Transcript  
of Salvatore Antonio Fratto  
(August 30, 2006)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X

UNITED STATES SECURITIES :

AND EXCHANGE COMMISSION, :

Plaintiff, :

. . . v. : Case No. 05-10983  
STEVEN E. NOTHERN, :

Defendant. :

-----X

Washington, D.C.

AUGUST 30, 2006

Videotaped deposition of ANTHONY

FRATTO, a witness herein, called for examination by  
counsel for Defendant, in the above-entitled  
matter, pursuant to notice, the witness being sworn  
by Raymond Heer, a Notary Public in and for the  
District of Columbia, taken at the offices of Foley  
Hoag, Washington, D.C. on August 30, 2006, at 10:35,  
a.m. and the proceedings being taken down by  
stenotype by Desirae S. Jura, RPR, and transcribed  
under her direction.

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 2  
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1  
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1 Q. I'm sorry.  
 2 A. FOMC. That was the way they had always done  
 3 it.  
 4 Q. Did anyone ever consider lockdowns for the  
 5 refunding conferences?  
 6 MS. WILLIAMS: Objection.  
 7 BY MR. THEODOROU:  
 8 Q. Before October 31st, 2001?  
 9 A. Not to my knowledge.  
 10 Q. Did you ever have a discussion with anybody  
 11 at Treasury about using a lockdown procedure for  
 12 refunding conferences?  
 13 A. No.  
 14 Q. Did anyone at Treasury ever suggest that the  
 15 lockdown should be used for refunding conferences?  
 16 A. No.  
 17 MS. WILLIAMS: Objection.  
 18 THE WITNESS: Sorry.  
 19 A. No, never. Again, I think it would be -- my  
 20 view is that it would have been a solution in  
 21 search of a problem.  
 22 BY MR. THEODOROU:

1 Q. And why is that?  
 2 A. Because I had never seen any event of a  
 3 reporter willfully breaking an embargo.  
 4 MR. THEODOROU: Why don't we take a  
 5 five-minute break.  
 6 THE VIDEOGRAPHER: This concludes tape one  
 7 in the deposition of Tony Fratto. Off the record  
 8 at 11:41:30.,  
 9 (Recess taken.)  
 10 THE VIDEOGRAPHER: This begins tape two in  
 11 the deposition of Tony Fratto. On the record at  
 12 11:48:50.,  
 13 BY MR. THEODOROU:  
 14 Q. Mr. Fratto, turning your attention to  
 15 October 31st, 2001, after your discussions with  
 16 these reporters, what was your understanding as of  
 17 October 31st of Treasury's policy on the use of  
 18 embargoes?  
 19 MS. WILLIAMS: Objection.  
 20 A. That we had a -- in terms of, you know,  
 21 whether it was a policy, my view is that we had a  
 22 policy of setting embargoes, that it was a

1 traditional thing. And, as I learned more about  
 2 it, that it was a useful and appropriate way to  
 3 release information at Treasury.  
 4 BY MR. THEODOROU:  
 5 Q. What exactly did an embargo prevent a person  
 6 from doing?  
 7 A. It prevented a member of the news media from  
 8 releasing the information that they received,  
 9 disseminating that information to the general  
 10 public.  
 11 Q. Before a particular time?  
 12 A. Before a particular time. That's right.  
 13 Q. Did it prevent them from disclosing the  
 14 information to anyone?  
 15 MS. WILLIAMS: Objection.  
 16 A. It -- no. I'd say, my view is the general  
 17 -- is that it prevented them from just releasing  
 18 the information to the general public. My view,  
 19 and I think it was the common understanding among  
 20 the reporters in the Treasury pressroom, that it  
 21 was perfectly appropriate to discuss information  
 22 with members of the news organization, like an

1 editor.  
 2 Q. Did you define for them who at their press  
 3 organizations they could discuss the information  
 4 with?  
 5 A. No. Not specifically.  
 6 Q. Now, a press person who received the  
 7 information at a press conference could discuss  
 8 that information with another Treasury employee?  
 9 MS. WILLIAMS: Objection.  
 10 A. They could discuss that information with a  
 11 member of the Office of Public Affairs.  
 12 BY MR. THEODOROU:  
 13 Q. How about another, an employee who did not  
 14 work at the Office of Public Affairs?  
 15 A. Reporters are not -- let me put it this way.  
 16 Treasury employees outside the Office of Public  
 17 Affairs are not permitted to talk to reporters  
 18 except by authority granted to them and in the  
 19 presence of a member of the Office of Public  
 20 Affairs. That's been a standard policy at Treasury  
 21 for a long time, since the beginning.  
 22 Q. Now, before October 31st, 2001, did you

1 speak, of breaking an embargo. There's absolutely  
 2 no evidence of it. And so I don't -- didn't then  
 3 and I certainly don't today see the need at every  
 4 press event where we employ an embargo, which is a  
 5 daily occurrence, to cite the potential penalties  
 6 if the embargo is broken.

7 BY MR. THEODOROU:

8 Q. Did Treasury obtain the consent from  
 9 everybody attending the conference that they would  
 10 abide by the embargo?

11 A. No.

12 Q. Now, directing your attention to October  
 13 31st, 2001. You attended that refunding  
 14 conference. Correct?

15 A. Yes.

16 Q. Now, did Elizabeth Holahan ask the attendees  
 17 at that press conference whether they agreed to  
 18 honor the 10:00 a.m. embargo that day?

19 A. No. She simply announced the embargo time  
 20 twice.

21 Q. Did she require the attendees to sign a form  
 22 stating that or any document that they would honor

1 MS. WILLIAMS: Objection.  
 2 A. Willfully violated. Before October 31st?  
 3 No, the only event that I really recall was  
 4 subsequent to October 31st.

5 BY MR. THEODOROU:

6 Q. Apart from willfully, do you remember --  
 7 prior to October 31st, 2001, do you remember any  
 8 instance of a premature disclosure of information  
 9 from a press conference at Treasury?

10 MS. WILLIAMS: Objection.

11 A. An event was brought to my attention, but I  
 12 wasn't -- I didn't have first-hand experience with  
 13 it.

14 BY MR. THEODOROU:

15 Q. What, so there was an event brought to your  
 16 attention where an embargo had been violated?

17 MS. WILLIAMS: Objection.

18 A. I couldn't make a judgment whether the  
 19 embargo was violated. I was asked -- I think I was  
 20 asked yesterday about an event involving our deputy  
 21 secretary Ken Dam, and in your letter specific date  
 22 referring to October 22nd, it was mentioned. I

1 an embargo?

2 A. No. We relied on their ethical  
 3 responsibilities.

4 Q. So that Treasury officials assumed that the  
 5 attendees would honor whatever embargo time was  
 6 announced. Correct?

7 A. Yes.

8 MS. WILLIAMS: Objection.

9 BY MR. THEODOROU:

10 Q. So as of October 31st, 2001, reporters were  
 11 governed by an honor system not to release  
 12 information before the embargo time expired?

13 MS. WILLIAMS: Objection.

14 A. Is that an honor system? I don't know.

15 BY MR. THEODOROU:

16 Q. But they were self --

17 A. They were self-enforcing.

18 Q. Self-enforcing.

19 A. Yeah.

20 Q. Now, you testified you were not aware of any  
 21 instance before October 31st in which an embargo at  
 22 Treasury was violated?

1 haven't had any first-hand knowledge or experience  
 2 with that. If I have, I'm just not aware. It  
 3 wasn't an issue area that was in my jurisdiction at  
 4 that time.

5 Q. Before the October 31st conference, did the  
 6 issue regarding Mr. Dam's press conference, was  
 7 that brought to your attention?

8 A. Before October 31st?

9 Q. Before October 31st, 2001.

10 A. I have no recollection of that.

11 Q. I will see if it refreshes your  
 12 recollection.

13 A. Okay.

14 Q. If it does, it doesn't.

15 MR. THEODOROU: Could we go off the record  
 16 just a second?

17 THE VIDEOGRAPHER: Off the record at  
 18 12:46:43.,

19 (Recess taken.)

20 THE VIDEOGRAPHER: On the record at  
 21 1:25:52.,

22 BY MR. THEODOROU:

1 was obviously a unique announcement, and I wanted  
 2 to make sure, A, that they had enough time to, you  
 3 know, ask questions at the press conference,  
 4 thoroughly consume the news that they were getting,  
 5 and write thoughtful -- write thoughtful stories.  
 6 And, if they had any questions -- you know, it's  
 7 not unusual for after a press conference or the  
 8 release of information that the reporters, they get  
 9 down to their desks, they get down to their desk  
 10 and get into writing and they realize they have got  
 11 two or three questions on the news you just gave  
 12 them.

13 In this case, for example, they might ask  
 14 was it -- I mean, it wasn't the case, but, you  
 15 know, had 30-year ever been discontinued before?  
 16 They would want a little historical data to add  
 17 into their stories, things like that. So I wanted  
 18 to make sure going into this that they had enough  
 19 time on this important piece of news to write good  
 20 accurate stories, and so I wanted to make sure they  
 21 got that amount of time.

22 Q. And when did you decide it was going to be

1 news here. I don't think we should try to be --  
 2 you know, let's not try to break ground everywhere.  
 3 You know, the time to try new things with  
 4 established events like a quarterly press  
 5 conference was not when you have a major piece of  
 6 news because you are just increasing the risk that  
 7 something could go wrong. And I never had a whole  
 8 lot of faith in the ability of Treasury's Internet  
 9 infrastructure to carry off a web cast in a timely  
 10 way. So I thought it was a bad idea and argued  
 11 against it. And I thought we should actually go,  
 12 you know, far more conservative to the other, on  
 13 the other extreme, which was what I in the end  
 14 advocated and what we agreed to, which was to set a  
 15 hard and fast time for lifting the embargo for all  
 16 the reasons I just said earlier.

17 Q. When you had this discussion with Mr.  
 18 Fisher, how did having a live web cast increase the  
 19 chances of something going wrong?

20 A. Well, I mean, most obviously, you know, we  
 21 have a history at Treasury of servers going down.  
 22 You know? I mean, it wasn't a particularly

1 at 10:00 a.m.?  
 2 A. It was late the previous week.  
 3 Q. Did you discuss the issue of setting the  
 4 time with anybody?  
 5 A. Yes. I discussed it with -- discussed it  
 6 with Betsy. I discussed it with -- I certainly  
 7 discussed it with Peter Fisher. And there were  
 8 certainly others in the room when we had that  
 9 discussion, most likely Brian Roseborough and/or  
 10 Tim Bitsberger or Jeff Luther, maybe Paul Malvey.  
 11 I don't recall who else was in the room, but I know  
 12 there were others in the room and that's the likely  
 13 group that would have been there.

14 Q. Was there one discussion with the group?  
 15 A. There was at least one discussion. There  
 16 may have been more. I don't remember specifically.  
 17 Q. All right. And what was said in that  
 18 discussion?  
 19 A. Well, Peter -- Peter first had the idea that  
 20 he wanted to have the press conference be live web  
 21 cast. And I objected to that. I thought that, you  
 22 know, we already have a fairly sizeable piece of

1 reliable Internet infrastructure at Treasury, and I  
 2 didn't have faith that we'd get to 10 minutes  
 3 before the press conference and someone from the IT  
 4 office would call up and say, you know, we can't  
 5 web cast it, or there's going to be a delay, or the  
 6 server went down. Something like that. And I  
 7 wanted us to be, you know, tried and true,  
 8 reliable, give the news to actual human beings who  
 9 will get the news out the normal, you know, the  
 10 normal way. The only change was to give them, you  
 11 know, more time in a hard set embargo.

12 Q. And your concern was that those who attended  
 13 the conference would have a leg up on others who  
 14 may be watching it in the general public if there  
 15 was something wrong with the web cast?

16 MS. WILLIAMS: Objection.

17 A. No.

18 BY MR. THEODOROU:

19 Q. What does the Internet have to do with it,  
 20 the Internet being down, if you are having a live  
 21 press conference on TV?

22 A. He was asking about web casting it, not

1 doing a live --  
 2 Q. Okay.  
 3 A. And that would have been an additional  
 4 problem. He said, well, why -- he said, well,  
 5 can't we go, can't we just go live? And I said --  
 6 and in that case it would be broadcast on TV. And  
 7 I said, "Peter, I can't guarantee that --" you  
 8 know, the only usual suspects on the TV side that  
 9 would consider coming to cover a quarterly  
 10 refunding announcement, you know, would have been  
 11 Bloomberg, CNBC, you know, maybe Reuters. I would  
 12 have to ask them, do you plan on going live? And  
 13 they would say, is he going to make news? And I'd  
 14 say, I can't tell you. And then you get into a  
 15 very tricky discussion that I definitely don't want  
 16 to have. I don't want to tip TV guys that we might  
 17 be making special news at a quarterly refunding  
 18 announcement, so I can't talk them into covering  
 19 events. So I couldn't guarantee to Peter that it  
 20 would be covered live. The only way you could  
 21 guarantee that it would be broadcast live would be  
 22 in the form of a web cast, but I didn't have good

1 you find much news there.  
 2 Q. And why did Mr. Fisher want to go live?  
 3 A. Peter had been looking at -- Peter comes  
 4 from, had been up at the New York Fed and had a  
 5 high degree of interest in trying to find ways to  
 6 increase efficiency in markets, and one of the ways  
 7 that you increase efficiency in markets is by  
 8 reducing the time span in terms of information and  
 9 transmission of information. So, for example, on  
 10 the auction results, there was, there had been, you  
 11 know, time lags. You have to think about the size  
 12 of these markets and the margins that traders are  
 13 dealing with. You know, you would get auction  
 14 results, and sometimes it would take four or five  
 15 minutes to get from the closing of an auction to  
 16 get the results published. And Peter worked to  
 17 find ways to squeeze that down to one to two  
 18 minutes. He would like to make it instantaneous.  
 19 So any way that you can find to get instantaneous  
 20 news to the market in the most transparent way  
 21 possible, that's something that Peter had a high  
 22 degree of interest in and just felt it would

1 confidence in the reliability of web casting.  
 2 Q. Because of the Treasury's Internet  
 3 facilities?  
 4 A. Yeah.  
 5 THE VIDEOGRAPHER: This concludes tape two  
 6 in the deposition of Tony Fratto. Off the record  
 7 at 1:48:53.,  
 8 (Brief recess taken.)  
 9 THE VIDEOGRAPHER: This begins tape three in  
 10 the deposition of Tony Fratto. On the record at  
 11 1:49:30.,  
 12 BY MR. THEODOROU:  
 13 Q. Why was October 31st different than the May  
 14 and August press conference, quarterly refunding  
 15 press conferences where you had to set a time, as  
 16 opposed to polling the reporters?  
 17 A. The news, you know, that we were  
 18 discontinuing the 30-year bond. That it was  
 19 definitely -- you know, I knew that. I knew that  
 20 it was going to be bigger news than, you know --  
 21 you know, a quarterly refunding press conference is  
 22 a relatively sleepy affair. It's not usual that

1 improve market efficiency.  
 2 Q. Did he have any concern that there would be  
 3 a release, a premature release of the information  
 4 discussed at the press conference before the  
 5 embargo?  
 6 MS. WILLIAMS: Objection.  
 7 A. I don't recall him expressing that to me.  
 8 BY MR. THEODOROU:  
 9 Q. And what was his response to your proposal?  
 10 A. In the end he agreed. I mean, he made this  
 11 philosophy of his, you know -- I was well aware, I  
 12 spent a lot of time with Peter and I knew that  
 13 that's what his reasoning was. But I just told him  
 14 that, in my judgment, it wasn't worth the risk. It  
 15 just wasn't -- you know, we don't -- if we want to  
 16 do that, let's do it, but let's do it over some  
 17 period of time. Let's do it over the next three  
 18 quarterly refundings, you know, where we -- you  
 19 know, at one quarterly refunding we say we are  
 20 considering doing a live web cast. You know? Four  
 21 months later at the next quarterly refunding we  
 22 say, at the next quarterly refunding we will web

1 cast. And then on the third quarterly refunding,  
 2 we actually web cast. And then that way, number  
 3 one, it gives us a lot of time to make sure that we  
 4 have a rigorous infrastructure to be able to  
 5 reliably web cast; and, number two, you tell the  
 6 markets what to expect and they have a lot of time  
 7 to know how, you know, how to expect news to come  
 8 to them. And, you know, so I just wanted us to be  
 9 cautious about doing big changes, and I just did  
 10 not think that it was appropriate to try to do a  
 11 major change when we were also making major news.  
 12 It just wasn't worth the risk.

13 Q. Was your concern -- well, given your  
 14 concerns about the Internet capability at Treasury,  
 15 was your concern that something could have gone  
 16 wrong with the web cast, and at the same time you  
 17 were releasing information to reporters who would  
 18 then have advanced information compared to the  
 19 general public?

20 A. Reporters always have advanced information  
 21 ahead of the general public. It's their job; we  
 22 rely on them to disseminate news to the general

1 error. You know? And that human error is going to  
 2 happen.  
 3 BY MR. THEODOROU:  
 4 Q. But I guess my question is, my question is,  
 5 you had concerns about their ability that -- their  
 6 Internet capability and, therefore, they might not  
 7 be able to web cast at the same time. So he would  
 8 be doing a live press conference to a group of  
 9 reporters and people attending the conference. And  
 10 if the web cast couldn't go out, so what? What  
 11 difference would that make?

12 MS. WILLIAMS: Objection.

13 A. We would have raised expectations that you  
 14 will find the news on the web cast, and then they  
 15 wouldn't see it. That was the risk.

16 BY MS. THEODOROU:

17 Q. So it wasn't an issue of market sensitive  
 18 information getting out ahead?

19 A. No.

20 Q. Okay.

21 A. No. Not at all.

22 Q. Did Mr. Fisher, was Mr. Fisher -- how many

1 public. So I didn't have a concern about that. In  
 2 fact, I relied -- when I say, I really mean this.  
 3 I rely on the Treasury press corps to disseminate  
 4 news to the markets and the general public. I have  
 5 much more confidence in that part of dissemination  
 6 than I do on the web page dissemination. Everyone  
 7 who has a Web site that they deal with knows that,  
 8 you know, at the most unpredictable times you have  
 9 problems with the web page. So I'm not ready and I  
 10 certainly wasn't ready in the year 2001, I'm not  
 11 even sure I'm ready in the year 2006 to say I can  
 12 put full faith and confidence in Internet  
 13 infrastructure to get that information out on a  
 14 precise time. We're not there yet.

15 Q. Especially after what happened in October  
 16 2001.

17 MS. WILLIAMS: Objection.

18 A. No. I mean, that had nothing to do with it.  
 19 That was human error, that wasn't even  
 20 infrastructure error. There is lots of  
 21 infrastructure error. I have seen infrastructure  
 22 error with our web platform. But that was human

1 discussions did you have about this issue with Mr.  
 2 Fisher?

3 A. Just, I mean, no more than two.

4 Q. Was Mr. Fisher concerned about the danger  
 5 that that information might leak out before 10:00,  
 6 a.m.?

7 MS. WILLIAMS: Objection.

8 A. You would have to ask him. If he was, he  
 9 didn't express it to me.

10 BY MR. THEODOROU:

11 Q. So Mr. Fisher did not express a concern  
 12 about the leaking out of information?

13 A. Not that I recall.

14 Q. If you could go to Exhibit 1, Mr. Fratto.

15 A. Okay.

16 Q. Page 2, the second paragraph. Do you see  
 17 that?

18 A. Yes.

19 Q. Now, when did you first learn about the  
 20 decision to suspend the 30-year bond?

21 A. That sounds about right. I recall it being  
 22 on Thursday, the 26th.

1 until 10:00 a.m. on that date.  
 2 Q. Were any steps taken to advise attendees who  
 3 were not members of the press that the news embargo  
 4 also applied to them when they attended these  
 5 conferences?

6 A. I wasn't aware --

7 MS. WILLIAMS: Objection.

8 A. I wasn't aware of anyone in attendance --  
 9 other than some Treasury policy staff, I wasn't  
 10 aware of others who were not members of the media  
 11 who were in attendance.

12 BY MR. THEODOROU:

13 Q. So before the October 31st, 2001 conference,  
 14 you were not aware of anyone other than media  
 15 attending the quarterly refunding conferences?

16 A. That's right.

17 MS. WILLIAMS: Objection.

18 BY MR. THEODOROU:

19 Q. Did you take any steps before October 31 to  
 20 determine whether anyone outside of the media  
 21 attended quarterly refunding press conferences?

22 A. No.

1 Q. Do you know if anybody at Treasury ever took  
 2 any steps before October 31st, 2001 to determine  
 3 whether nonmedia persons attended the quarterly  
 4 refunding press conferences?

5 A. I don't know if they did.

6 Q. Now, directing your attention again to  
 7 Exhibit 1.

8 Before we get there, who was allowed to  
 9 attend quarterly refunding press conferences before  
 10 October 31st, 2001?

11 A. There wasn't a policy on who was allowed to  
 12 attend. But I never had any expectations that  
 13 anybody -- that anyone except excepting members of  
 14 the news media and Treasury staff would attend.

15 Q. But there was no policy as to who could  
 16 attend?

17 A. Not that I'm aware of. I didn't have a  
 18 policy.

19 Q. Have you ever heard anybody talk about a  
 20 policy as to who could attend the quarterly  
 21 refunding press conferences --

22 A. No.

1 Q. -- before October 31st, 2001?

2 A. No.

3 Q. As of October 31st, 2001, do you know who at  
 4 Treasury was responsible for deciding who could  
 5 attend the quarterly refunding press conferences?

6 A. I'm sorry, could you say that again?

7 Q. As of October 31st, 2001, do you know who at  
 8 Treasury was responsible for deciding who could  
 9 attend press conferences, refunding press  
 10 conferences?

11 A. No. All I can say is the Office of Public  
 12 Affairs was responsible for inviting members of the  
 13 media and clearing them in for press conferences,  
 14 including quarterly refunding announcements.

15 Q. Do you know if there was a comprehensive  
 16 list of everyone who attended the October 31st,  
 17 2001 press conference?

18 A. No.

19 Q. Now, how did those individuals who were  
 20 attending the quarterly refunding press conferences  
 21 as of October 31st, 2001 get into the Treasury  
 22 Building on the morning of the press conference?

1 A. Those individuals, meaning members of the --  
 2 are you make a distinction between members of the  
 3 media or nonmembers of the media?

4 Q. Anybody who was attending.

5 A. Well, for anyone to enter the Treasury  
 6 Building, they need to be cleared by Secret  
 7 Service. And unless they have a permanent badge,  
 8 they need to be -- a permanent Treasury badge, in  
 9 which they can't wouldn't have to be cleared in.  
 10 So if they were cleared in, they had to be escorted  
 11 to wherever they need to be in the building by a  
 12 Treasury official.

13 Q. And what room in the Treasury Building was  
 14 normally used for the quarterly refunding press  
 15 conferences?

16 A. The diplomatic reception room.

17 Q. And is there a reason why the diplomatic  
 18 reception room as opposed to another conference  
 19 room was used for that particular kind of  
 20 conference?

21 A. There is no other conference -- there was no  
 22 other conference room at the time. The cash room.

## **EXHIBIT B**

### **Cited Excerpts from the Deposition Transcript of Paul Malvey (June 23, 2006)**

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

----- )  
UNITED STATES SECURITIES AND )  
EXCHANGE COMMISSION, )  
Plaintiff, )  
v. ) No. 05-10983 (NMG)  
STEVEN E. NOTHERN, )  
Defendant. )  
----- )

Washington, D.C.

Friday, June 23, 2006

Deposition of PAUL FRANCIS MALVEY, a witness herein,  
called for examination by counsel for Defendant in  
the above-entitled matter, pursuant to agreement, the  
witness being duly sworn by CHERYL A. LORD, a Notary  
Public in and for the District of Columbia, taken at  
the offices of FOLEY HOAG LLP, 1875 K Street, N.W.,  
Suite 800, Washington, D.C., at 10:10 a.m., Friday,  
June 23, 2006, and the proceedings being taken down  
by Stenotype by CHERYL A. LORD, RPR, CRR, and  
transcribed under her direction.

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1 APPEARANCES:  
 2  
 3 On behalf of Plaintiff:  
 4 JOHN J. ROSSETTI JR., ESQ.  
 5 Senior Counsel  
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 13 On behalf of Defendant:  
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 24  
 25

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1 APPEARANCES CONTINUED:  
 2  
 3 On behalf of United States Department of the  
 4 Treasury:  
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 6 UNITED STATES DEPARTMENT OF THE TREASURY  
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 8 Washington, D.C. 20220  
 9 (202) 622-2317  
 10  
 11 ALSO PRESENT:  
 12 Erica L. Ruddy and Dustin Lavallee, videographer  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 If -- if you go back, we're talking about  
 2 a period of time when we were talking about paying  
 3 down the federal debt by 2009 or 2011.

4 Q. M-hm.

5 A. We had paid down 670 billion dollars --

6 Q. M-hm.

7 A. -- so there was -- I remember briefing I  
 8 think Senate fi- -- or Senate budget and House  
 9 financial services committee staff about Treasury  
 10 financing and what the world would look like without  
 11 treasuries.

12 Q. Okay. And had there been reports that  
 13 Mr. Fisher had a view on -- on whether or not the  
 14 long bond should be eliminated?

15 A. No, no.

16 I mean, that's -- no. I don't mean to  
 17 smile, but I mean, we wouldn't -- if you're an  
 18 official in that position, you don't hold views in  
 19 public.

20 Q. Okay. No.

21 I'm talking about whether he had views on  
 22 the subject even before he was confirmed.

23 A. Don't know. He was in charge of the  
 24 market divisions of the New York Fed.

25 Q. Okay. Now, the --

1 MR. ROSSETTI: I'm sorry.

2 John, how much longer are you going to be  
 3 going before we break?

4 MR. SHOPE: Well, I was hoping to go for a  
 5 little bit since I think both I and the witness had  
 6 something to eat not too long ago.

7 MR. ROSSETTI: All right. Can we just  
 8 take a quick break?

9 MR. SHOPE: Okay. Sure.

10 We can take it right now if you like.

11 MR. ROSSETTI: Yeah.

12 Let me do that, and I'll be right back.

13 THE VIDEOGRAPHER: Off the record at  
 14 12:21:42 AM.

15 (Whereupon, at 12:21 p.m., the deposition  
 16 in the above-entitled matter was recessed, to  
 17 reconvene at 12:50 p.m., this same day.)

1 AFTERNOON SESSION

2 (12:50 p.m.)

3

4 Whereupon,

5 PAUL FRANCIS MALVEY,

6 the witness testifying at the time of recess, having  
 7 been previously duly sworn, was further examined and  
 8 testified further as follows:

9  
 10 THE VIDEOGRAPHER: We're back on the  
 11 record at 12:50:33 PM.

12

13 EXAMINATION BY COUNSEL FOR DEFENDANT (RESUMED)

14 BY MR. SHOPE:

15 Q. Actually, before we continue on to the  
 16 suspension of the long bond, I wanted to follow up on  
 17 a little bit of some of the things we were talking  
 18 about with regard to press embargoes before we had  
 19 the lunch break.

20 First of all, did you -- other than the  
 21 matter with -- regarding Mr. Davis that we'll get  
 22 into in some detail, did you ever hear of any other  
 23 violation of the embargo rule as you understood it  
 24 with regard to any quarterly refunding conference?

25 A. I mentioned one, but it was 30 years ago.

1 Q. I'm sorry?

2 A. 30 years ago.

3 I don't have any direct information on it,  
 4 but there was -- and what -- wasn't like this, but  
 5 something happened 30 years ago.

6 Q. And what was -- what was that?

7 A. It was that the Federal Reserve used to --  
 8 I'm sorry -- Treasury would send the press release to  
 9 the Federal Reserve, and -- to the Federal Reserve  
 10 Bank in Philadelphia -- and the Federal Reserve Bank  
 11 in Philadelphia would fax it to the other 11 banks.

12 And so they would send it to -- fax it to  
 13 the Federal Reserve Bank in Philadelphia about 15  
 14 minutes in advance so that he could fax to the other  
 15 11 banks so the presidents of the other 11 banks  
 16 would have the news.

17 And it turned out that he was being wined  
 18 and dined and being taken to baseball -- Yankee  
 19 baseball fan -- games and other things by somebody in  
 20 New York and so he would give this one person in New  
 21 York a heads-up on the news, but that's -- was mid-  
 22 to late '70s.

23 Q. Okay. And that was a scandal about which  
 24 you heard at the time?

25 MR. ROSSETTI: Objection.

1 A. It wasn't a scandal.  
 2 Q. Oh.  
 3 A. I mean, I don't think -- I have no idea  
 4 whether it was even in the public domain.  
 5 All I -- an old-timer told me that.  
 6 Q. M-hm. And do you know what happened to  
 7 the individual?  
 8 A. I have no idea.  
 9 Q. Okay. And were there ever to your  
 10 knowledge any violations of the -- I'm sorry.  
 11 So just to be clear: Other than that  
 12 incident about which you had heard from an old-timer,  
 13 there -- there -- there weren't any other re- --  
 14 violations of the quarterly refunding embargoes to  
 15 your knowledge?  
 16 A. Not to my knowledge, no.  
 17 Q. Okay? Did you ever -- now, we talked  
 18 about earlier about the embargo that related to the  
 19 weekly auction notice.  
 20 Do you recall that?  
 21 A. Yes. Okay. Right.  
 22 Q. In other words we were talking about that  
 23 earlier today.  
 24 A. M-hm.  
 25 Q. Was that embargo ever violated to your

1 knowledge?  
 2 A. Not to my knowledge, no.  
 3 Q. Okay. If there had been a violation,  
 4 would you likely have been told about it?  
 5 A. I suspect so.  
 6 Q. M-hm. By the way, if there had been an  
 7 embargo -- if there had been a violation of the  
 8 quarterly refunding embargo would you likely have  
 9 heard about it?  
 10 A. I suspect so.  
 11 Q. Okay. And was there -- was there any  
 12 penalty if somebody did violate the embargo for the  
 13 quarterly refunding announcement?  
 14 A. I'm an economist. I have no idea.  
 15 Q. Is the answer you don't know?  
 16 A. I don't know.  
 17 Yeah.  
 18 No, I don't know.  
 19 Q. I guess what I'm getting at, as far as --  
 20 as far as -- as far as -- I'm not just asking about  
 21 criminal penalty.  
 22 I'm just asking about, was there anything  
 23 that would happen to the person, you know --  
 24 A. I have --  
 25 Q. -- from the point of view of the Treasury

1 Department, for example.  
 2 A. I have no idea.  
 3 (Discussion off the record.)  
 4 BY MR. SHOPE:  
 5 Q. Let me rephrase the question.  
 6 As far as you're aware, was there any  
 7 policy that the Treasury Department had with regard  
 8 to what would happen if one of the persons attending  
 9 the quarterly refunding conference were to fail to  
 10 abide the embargo and to disclose the information in  
 11 advance of the embargo?  
 12 MR. ROSSETTI: Objection.  
 13 A. I have no idea. It's not my area.  
 14 BY MR. SHOPE:  
 15 Q. Okay. That's fine.  
 16 Were the press releases that were read at  
 17 the quarterly refunding conference, what you referred  
 18 to as the talking points earlier -- would those be  
 19 posted on the Treasury Web site?  
 20 A. They would go up eventually.  
 21 Q. Okay. And do you know who was in charge  
 22 of making that happen?  
 23 A. A career person in -- in the public  
 24 affairs office.  
 25 Q. Do you know who that was?

1 A. I can't remember her name.  
 2 Florence or --  
 3 Q. Frances?  
 4 A. Frances.  
 5 Q. Frances Anderson?  
 6 A. I -- Helen Anderson worked for me --  
 7 Q. I'm sorry?  
 8 A. Helen Anderson worked for me --  
 9 Q. Oh.  
 10 A. -- and I just knew her as Frances. I'm  
 11 not quite sure what her last name was.  
 12 Q. Okay. And the -- now, other than with  
 13 regard to October, the quarterly refunding conference  
 14 on October 31, 2001, did you ever hear of any  
 15 incidents where press releases were posted on the Web  
 16 site of the Treasury Department before it was  
 17 intended or at least intended by somebody that they  
 18 go up?  
 19 MR. ROSSETTI: Objection.  
 20 A. I -- I'm not familiar with that, no.  
 21 BY MR. SHOPE:  
 22 Q. Do you know -- do you know who a Kenneth  
 23 Dam is?  
 24 A. Ken Dam?  
 25 Q. M-hm.

**EXHIBIT C**

**Cited Excerpts from the Deposition Transcript  
of Peter Fisher  
(August 8, 2006)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES SECURITIES )  
AND EXCHANGE COMMISSION, )  
                            )  
                            Plaintiff, )  
                            )  
                            )  
                            vs.            ) No. 05-10983  
                            )                    (NMG)  
STEVEN E. NOTHERN, )  
                            )  
                            Defendant. )  
----- )

VIDEOTAPED

DEPOSITION OF PETER R. FISHER

New York, New York

August 8, 2006

Reported by:  
PAMELA J. MAZZELLA, RPR  
JOB NO. 7046



1 Fisher

2 Q. And so he didn't give any more  
3 detail other than it was a shame that the  
4 information had gotten out early?

5 A. I -- as I had been talking to  
6 Michelle Davis, I assume the secretary had  
7 also. I didn't expect for him to talk to me  
8 about, in any detail about press office  
9 procedures.

10 Q. Now, you mentioned to Ms. Williams  
11 that the market is constantly trying to  
12 anticipate what it is the Treasury is going  
13 to do at the Refunding Conferences, correct?

14 A. Yes.

15 Q. And would it be also fair to say  
16 that it is a goal of the Treasury to make its  
17 announcement at those Refunding Conferences  
18 regular and predictable?

19 MS. WILLIAMS: Objection.

20 A. The phrase "regular and  
21 predictable" refers to the -- there is a term  
22 used in Treasury debt management to convey  
23 that auctions occur on regular and  
24 predictable dates.

25 Many sovereign borrowers change

1 Fisher

2 securities at auction, and never changing  
3 your policies or inducing a great deal of  
4 inertia in the policy-making process.

5 I don't think there is anything in  
6 the fact of regular and predictable auction  
7 calendar that suggests a policy is best  
8 pursued which changes the auction, changes  
9 debt management policies the least.

10 Changes are being made all the time  
11 in increments and are then being announced as  
12 clearly as one can to the market. So I would  
13 see it rather differently than your question  
14 implied.

15 Q. Do you recall there being criticism  
16 that the announcement on October 31 just took  
17 the market by surprise?

18 A. I recall some people saying it took  
19 them by surprise and other people saying they  
20 anticipated it.

21 Q. But do you recall anyone saying in  
22 substance that the Treasury did a bad job  
23 here because it failed to prepare the market  
24 for this information in advance?

25 A. Well, you have shown me various

1 Fisher

2 when they will be auctioning their bonds.  
3 They do not provide a forward calendar that  
4 commits them to auctioning securities at  
5 particular dates. Whereas the United States  
6 Treasury since the 1970s has committed itself  
7 to a practice of regular and predictable  
8 auctions.

9 So that phrase refers to the  
10 auction calendar. The announcement process  
11 is in advance of those auctions to specify  
12 the quantities that will be announced, that  
13 will be auctioned on those specified dates.

14 Q. So there is no policy goal within  
15 Treasury in your understanding of trying to  
16 make policies themselves, as opposed to the  
17 specific dates of auctions, regularly and  
18 predictable?

19 MS. WILLIAMS: Objection.

20 A. Well, policies change from one  
21 administration to another. I think that it's  
22 very important to recognize the difference  
23 between creating a regular and predictable  
24 calendar of auctions, which allows investors  
25 to anticipate when they can acquire Treasury

1 Fisher

2 clippings which say as much, and that's the  
3 distinction I'm trying to draw, is if you  
4 leak it to the market in advance, then you  
5 don't surprise the market, but then you've  
6 leaked it, and that would be a bad process in  
7 my view.

8 Q. One last question. Ms. Williams  
9 was asking you about your regrets.

10 Do you regret not having been more  
11 forceful with Michelle Davis about  
12 distributing the decision to cancel the long  
13 bond in the form of an internet announcement  
14 without an embargo?

15 A. No because I think that she and I  
16 had a very full discussion about the pros and  
17 cons of that. I feel I informed her of my  
18 feeling and she informed me of hers. And I  
19 feel I have been involved enough in  
20 government and public decision-making to know  
21 that you don't always get the outcome you  
22 want, but if you got a chance to debate the  
23 pros and cons of something and made as good a  
24 decision as the responsible person could,  
25 which was Michelle in that case, then it's

1 Fisher  
 2 pretty good.  
 3 Q. Did you ever tell anybody about the  
 4 conversation that you had had with Ms. Davis  
 5 in anticipation of the conference on October  
 6 31 in which you had suggested not using an  
 7 embargo?  
 8 A. Did I ever -- have I ever told  
 9 anyone since or did I ever tell anyone at the  
 10 time? Please rephrase.  
 11 Q. Before today did you ever tell  
 12 anybody oh, by the way, I had this  
 13 conversation with Miss Davis in which I  
 14 suggested that we get rid of the embargo?  
 15 A. I'm confident I discussed it with  
 16 my staff at the time, the pros and cons of  
 17 it. I don't recall making a public matter of  
 18 it after the fact.  
 19 Q. In other words, your memory is that  
 20 you discussed with your staff prior to  
 21 October 31 the fact that you were having a  
 22 conversation with Ms. Davis in which you were  
 23 proposing not using the embargo?  
 24 MS. WILLIAMS: Objection.  
 25 A. That's my recollection.

1 Fisher  
 2 Q. Do you know if Mr. Davis had agreed  
 3 to abide by the embargo?  
 4 MR. SHOPE: Objection.  
 5 A. I don't have any specific knowledge  
 6 of that.  
 7 MS. WILLIAMS: I have no further  
 8 questions.  
 9 MR. SHOPE: I have nothing.  
 10 THE VIDEOGRAPHER: The time is  
 11 1:27 p.m. and this marks the end of the  
 12 videotaped deposition of Mr. Peter  
 13 Fisher.  
 14 (Time noted: 1:27 p.m.)  
 15  
 16 PETER R. FISHER  
 17  
 18 Subscribed and sworn to before me  
 19 this \_\_\_\_ day of \_\_\_\_\_, 2006.  
 20  
 21  
 22  
 23  
 24  
 25

1 Fisher  
 2 Q. And did you ever hear any  
 3 suggestion by your staff that the events of  
 4 October 31 were attributable to your own  
 5 hubris?  
 6 A. No.  
 7 MR. SHOPE: I have nothing  
 8 further.  
 9 MS. WILLIAMS: I have one  
 10 question.  
 11 EXAMINATION (Cont'd.)  
 12 BY MS. WILLIAMS:  
 13 Q. Do you recall who told you that Mr.  
 14 Malvey had let Mr. Davis attend the October  
 15 31 conference?  
 16 A. I don't recall, I don't recall who  
 17 informed me of that.  
 18 Q. Did you have any knowledge about  
 19 the circumstances under which Mr. Malvey  
 20 allowed Mr. Davis to attend?  
 21 A. No prior knowledge. After the fact  
 22 only what I was told about, what I said a few  
 23 minutes ago, about his being, Mr. Malvey  
 24 signing him in somehow or giving him  
 25 permission to attend the press briefings.

1  
 2 C E R T I F I C A T E  
 3 STATE OF NEW YORK )  
 4 : ss.  
 5 COUNTY OF NEW YORK )  
 6  
 7 I, PAMELA J. MAZZELLA, RPR, a  
 8 Notary Public within and for the State  
 9 of New York, hereby certify:  
 10 That PETER R. FISHER, the witness  
 11 whose deposition is hereinbefore set  
 12 forth, was duly sworn by me and that  
 13 such deposition is a true record of the  
 14 testimony given by the witness.  
 15 I further certify that I am not  
 16 related to any of the parties to this  
 17 action by blood or marriage, and that I  
 18 am in no way interested in the outcome  
 19 of this matter.  
 20 IN WITNESS WHEREOF, I have  
 21 hereunto set my hand this 11th day of  
 22 August, 2006.  
 23  
 24 PAMELA J. MAZZELLA, RPR  
 25

## **EXHIBIT D**

### **Cited Excerpts from the Deposition Transcript of Geoffrey Kurinsky (September 7, 2006)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----x  
UNITED STATES SECURITIES AND ) C.A. 05-10983  
EXCHANGE COMMISSION, ) (NMG)  
Plaintiff, )  
 ) VOLUME: I  
vs. ) PAGES: 1-242  
 ) EXHIBITS: 1-12  
STEVEN E. NOTHERN, )  
Defendant. )  
-----x

VIDEOTAPED DEPOSITION OF GEOFFREY  
KURINSKY, a witness called on behalf of the  
Plaintiff, pursuant to the provisions of the  
Massachusetts Rules of Civil Procedure,  
before Jill Shepherd, Registered  
Professional Reporter and Notary Public, in  
and for the Commonwealth of Massachusetts,  
at the offices of U.S. Securities and  
Exchange Commission, 33 Arch Street, Boston,  
Massachusetts, on Thursday, September 7, 2006,  
commencing at 10:18 a.m.

Page 2

1 APPEARANCES:  
 2  
 3 UNITED STATES SECURITIES AND EXCHANGE  
 4 COMMISSION  
 5 (By John J. Rossetti, Jr., Esquire)  
 6 (By Erica Williams, Esquire)  
 7 100 F Street, N.E.  
 8 Mail Stop 8549-D  
 9 Washington, D.C. 20549  
 10 Tel: 202.551.4819  
 11 Fax: 202.772.9237  
 12 E-mail: rossetti@sec.gov  
 13 On Behalf of the Plaintiff.  
 14  
 15 DONOGHUE, BARRETT & SINGAL, P.C.  
 16 (By Richard Goldstein, Esquire)  
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 19 Boston, Massachusetts 02108-3113  
 20 Tel: 617.720.5090  
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 22 E-mail: rgoldstein@dbslawfirm.com  
 23 On Behalf of the Witness,  
 24 Geoffrey Kurinsky.  
 25

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25	S. Nothern	

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1 APPEARANCES, CONTINUED  
 2  
 3 FOLEY HOAG, LLP  
 4 (By John Shope, Esquire)  
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 7 Tel: 617.832.1233  
 8 Fax: 617.832.7000  
 9 E-mail: jshope@foleyhoag.com  
 10 On Behalf of the Defendant,  
 11 Steven Nothern.  
 12  
 13  
 14 ALSO PRESENT: George Dobrenty, Videographer  
 15 Steve Nothern, Defendant  
 16  
 17 \* \* \* \* \*

Page 5

1 PROCEEDINGS  
 2 (Exhibit Nos. 1-2 marked)  
 3 THE VIDEOGRAPHER: Good morning.  
 4 We're recording and are now on the record.  
 5 Today's date is September 7, 2006, and the  
 6 time is 9:24 a.m. My name is George  
 7 Dobrenty. I am a legal videographer for  
 8 Alderson Court Reporters.  
 9 This is a deposition of Geoffrey  
 10 Kurinsky in the matter of the SEC vs. Steven  
 11 Nothern in the U.S. District Court for the  
 12 District of Massachusetts, Boston division,  
 13 C.A. No. 05-10983 (NMG). This deposition is  
 14 being taken at 33 Arch Street, Boston,  
 15 Massachusetts. The court reporter is Jill  
 16 Shepherd. Counsel will state their  
 17 appearances and the court reporter will  
 18 administer the oath.  
 19 MR. ROSSETTI: John Rossetti for  
 20 the plaintiff, United States Securities And  
 21 Exchange Commission.  
 22 MS. WILLIAMS: Erica Williams for  
 23 the United States Securities and Exchange  
 24 Commission.  
 25 MR. SHOPE: John Shope,

1 money?  
 2 A. Every day I would look at the, you know --  
 3 talking about the corporate bond market, I  
 4 mean, I could look at the portfolio. There  
 5 was no rush to spend that money that day. I  
 6 managed -- I used portfolio duration, which  
 7 is a measure of the interest rate  
 8 sensitivity as the prime position -- as the  
 9 prime input in the position of my portfolio,  
 10 what the duration was.  
 11 Q. Based on what your most significant holdings  
 12 were?  
 13 A. Right. I got that from a system,  
 14 calculated.  
 15 Q. Okay. And when would you typically perform  
 16 that sort of analysis?  
 17 A. First hour. Get ready for the day, and I  
 18 had all my accounts.  
 19 Q. In determining how you might spend the money  
 20 that was available to you on a given day,  
 21 what else would you do to do an analysis?  
 22 A. You know, I'd get market color. I mean, I'd  
 23 see if opportunities came up. You know,  
 24 particular corporate issues that looked  
 25 attractive, an idea from any one of my

1 specialists, mortgage idea, asset-backed  
 2 idea, Treasury idea, that I would evaluate.  
 3 Q. When you said you'd get ideas from your  
 4 specialists, you are meaning whether it was  
 5 Mr. Nothern or Vaream or Smith?  
 6 A. Right. Right.  
 7 Q. Okay. You said you'd look to get market  
 8 color. What did you mean by that?  
 9 A. Talk to the dealers. You know, what's going  
 10 on in the market? What's happening to, you  
 11 know, corporate trends? What's happening to  
 12 interest rates in general. Sort of general,  
 13 you know, "How's the marketing opening?  
 14 What's the tone for the day?"  
 15 Q. Did there come a point in time on  
 16 October 31st that you made a decision that  
 17 you were going to spend some of the  
 18 \$15 million to buy some securities?  
 19 A. Yes.  
 20 Q. And what securities did you purchase?  
 21 A. Bought 10 million Treasury bonds.  
 22 Q. That's the 30-year bonds?  
 23 A. Correct.  
 24 Q. What led you to that decision to purchase  
 25 those Treasury bonds?

1 A. Well, it was a trade that they were doing on  
 2 the trading desk.  
 3 Q. When you say "we," who are you referring to?  
 4 A. It was a trade that Steve Nothern, Rick  
 5 Smith, Peter Vaream -- it was a general --  
 6 we were doing a Treasury trade, and it was  
 7 -- you know, it was a trade that I went  
 8 along with the group and I bought 10 million  
 9 bonds.  
 10 Q. Do you know if David Kennedy was in on that  
 11 transaction?  
 12 A. I believe he was.  
 13 Q. Do you know if Peter Vaream was in on that?  
 14 A. I believe Peter was out. If that was the  
 15 case, we may have put some in his accounts.  
 16 I think he was out that day.  
 17 Q. So as you sit here today, you think that  
 18 Peter Vaream was out of the office that day?  
 19 A. Yeah, I'm not sure, but...  
 20 Q. Okay.  
 21 A. But I know the fact that Rick Smith, Dave  
 22 Kennedy, Steve Nothern, I was there, Jim  
 23 Calmas was there.  
 24 Q. Of those people that you just mentioned, who  
 25 was involved in this purchase for Treasury

1 bonds that you described?  
 2 A. I think Steve, Rick, David and myself. I  
 3 don't think Jim was.  
 4 Q. What was the total amount of the purchase?  
 5 A. Of the whole desk?  
 6 Q. Yes.  
 7 A. I believe it was 70 million.  
 8 Q. Of that 70 million, you said you purchased  
 9 10 million?  
 10 A. That's correct.  
 11 Q. Do you know how much of that 70 million or  
 12 remaining 60 million the others purchased?  
 13 A. Yeah. I think Steve bought 25, Dave Kennedy  
 14 bought 25, Rick bought 10. Again, this is  
 15 my recollection, and I bought 10. And I  
 16 might have -- I'm thinking if -- I am not  
 17 sure if I was thinking Peter's accounts or  
 18 not.  
 19 Q. Would have been included in the 10 million?  
 20 A. Yeah.  
 21 Q. I see. Now, what led up to this group --  
 22 this was a group decision to purchase these?  
 23 A. Yeah.  
 24 Q. What led up to this decision to purchase  
 25 these bonds?

1 A. Well, there was discussion as to whether the  
 2 Treasury Department would eliminate -- you  
 3 know, there was a lot of speculation about  
 4 what the Treasury Department would do with  
 5 the 30-year Treasury, whether they would,  
 6 you know, auction bonds this time or not.  
 7 And there was discussion -- Steve got up and  
 8 said that there was a discussion that they  
 9 might -- you know, that they might -- that  
 10 someone thought that the 30-year Treasury  
 11 bond might be eliminated from the auction.  
 12 Q. Did he say who that someone was that thought  
 13 the Treasury would eliminate the 30-year  
 14 bond?  
 15 A. Yeah, I recall it was from Pete Davis.  
 16 Q. Can you tell me specifically what it is that  
 17 Steve Nothern mentioned about Pete Davis?  
 18 A. He said that he had -- Pete Davis told him  
 19 that the Treasury was not going to have a  
 20 30-year bond auction in the refunding.  
 21 Q. When did Steve Nothern make that statement?  
 22 A. I remember it around 9:30ish. I don't  
 23 remember exactly.  
 24 Q. I think you said "he got up." What did you  
 25 mean, "he got up"?

1 something.  
 2 Q. While you were seated at your desk and on  
 3 the phone, did you see that other -- did you  
 4 notice that other people were standing?  
 5 A. Yeah.  
 6 Q. And the people that you noticed were  
 7 standing, were whom?  
 8 A. If I remember, Steve and Rick.  
 9 Q. Steve Nothern and --  
 10 A. Right.  
 11 Q. -- and Rick Smith?  
 12 A. Correct.  
 13 Q. Two of the portfolio managers you work with?  
 14 A. That's correct.  
 15 Q. All right. And you saw them standing. Were  
 16 they in a discussion with one other?  
 17 A. Steve was in his work station standing up  
 18 and Rick was in his work station standing  
 19 up. The way we always -- they talked about  
 20 things all the time.  
 21 Q. And at that point, did you notice anybody  
 22 else standing?  
 23 A. Not that I can recall.  
 24 Q. Did you notice David Kennedy at all at this  
 25 point?

1 A. I was on the phone talking about a corporate  
 2 trade and Steve was standing up talking to  
 3 Rick, he's in his station, and then Dave  
 4 afterwards, and they are talking about it  
 5 and they are starting to put a trade  
 6 together. And then I got attention, and  
 7 then said, you know, "Take me along. I will  
 8 take 10 million." I was focused on a  
 9 corporate -- something else, and it was a  
 10 trade that the desk was doing, so take me  
 11 along.  
 12 Q. Now, you said that you were on the phone?  
 13 A. Yeah.  
 14 Q. Who were you on the phone with at the time?  
 15 A. I don't remember, but it was related to a  
 16 corporate trade. I don't remember whether I  
 17 was getting information but I think I stood  
 18 up, two people were up. I'm thinking,  
 19 "What's going on?" I'm still on the phone  
 20 and talking, and then I overhear the buy,  
 21 and I said, "I will take 10 million."  
 22 Q. When you were on the phone, were you  
 23 standing or seated?  
 24 A. I was seated, and then I got up because I  
 25 realized other people were up and discussing

1 A. No.  
 2 Q. Was David Kennedy on the desk at that point?  
 3 A. I think so.  
 4 Q. Was he standing or seated?  
 5 A. I don't -- I'm guessing he was probably  
 6 seated, but I don't remember.  
 7 Q. Now, I thought you said when you were on the  
 8 phone you noticed some people standing and  
 9 then you stood up.  
 10 A. Yeah.  
 11 Q. What prompted you to stand up?  
 12 A. Well, it's like commotion. I mean,  
 13 something is happening; something is going  
 14 on. It's a natural instinct to see what's  
 15 going on.  
 16 Q. You said there was a commotion. What do you  
 17 mean, "There was a commotion"?

18 A. People were up, discussing about a trade,  
 19 and I'm part of the team, and, you know, I,  
 20 like, want to know what's going on because  
 21 maybe I want to get involved. It was a --  
 22 happened many times a day. I mean...  
 23 Q. How did you -- you said they were discussing  
 24 a trade. How did you know they were  
 25 discussing a trade?

1 A. Well, I guess they were standing up. I  
 2 could see that there was conversation --  
 3 there was John Cadogan, not specifically,  
 4 there was some dialogue going on and John's  
 5 a trader, so something was happening.  
 6 Q. Could you hear what they were saying?  
 7 A. Not specifically.  
 8 Q. All right. And what did you do? Let me  
 9 withdraw that.  
 10 A. Right.  
 11 Q. At this point, you are on the phone, you see  
 12 Nothern standing, you see Rick Smith  
 13 standing --  
 14 A. Yeah. And people saying what they are doing  
 15 -- saying they are --  
 16 MR. GOLDSTEIN: Just wait for  
 17 Mr. Rossetti to finish his question.  
 18 MR. ROSSETTI: Thanks.  
 19 Q. You are hearing that they are going to be  
 20 doing something and they are talking with  
 21 John Cadogan; is that correct?  
 22 A. (No audible response.)  
 23 Q. You got to verbalize your answer.  
 24 A. They are talking among themselves.  
 25 Q. Rick, Steve Nothern?

1 might be eliminating the 30-year Treasury  
 2 bond from the auction.  
 3 Q. When you heard that, were you still in your  
 4 work station or had you moved over to where  
 5 Steve Nothern --  
 6 A. I was in my work station.  
 7 Q. All right. So did Steve Nothern make that  
 8 statement?  
 9 A. Right. Yeah.  
 10 Q. So was he announcing it to you as well?  
 11 A. Yeah. He was talking -- talking about it  
 12 with Rick, I assume. I didn't hear what  
 13 they were talking about, but that was the  
 14 topic, topic du jour.  
 15 Q. But when Steve Nothern made this statement  
 16 about Peter Davis -- if you go to  
 17 Exhibit 3 --  
 18 A. Yeah.  
 19 Q. -- you see station 240 is where Nothern sat?  
 20 A. Right.  
 21 Q. And you sat at 265?  
 22 A. Correct.  
 23 Q. What was the distance between Nothern's work  
 24 station and your work station?  
 25 A. 25 feet. I don't know.

1 A. Right.  
 2 Q. And John?  
 3 A. Correct.  
 4 Q. The trader?  
 5 A. That's correct.  
 6 Q. At that point, could you hear what they were  
 7 discussing among themselves?  
 8 A. Well, I knew they were buying Treasuries.  
 9 Q. How did you know that?  
 10 A. Because I could hear it.  
 11 Q. What did you hear?  
 12 A. By then, I was aware of the refunding  
 13 announcement. At that point I was aware the  
 14 Treasury market was up, so my senses were  
 15 risen to the fact that there was information  
 16 that had been -- that had apparently been  
 17 released.  
 18 Q. Okay. So, specifically, what did you  
 19 hear -- you said there they were purchasing  
 20 Treasury bonds?  
 21 A. Right.  
 22 Q. What specifically did you hear at that  
 23 point?  
 24 A. I heard that there would have been a call  
 25 and -- from Pete Davis that the Treasury

1 Q. Okay.  
 2 A. Not a lot. I mean, you could easily be  
 3 heard.  
 4 Q. Right. But he'd have to be intending to  
 5 speak to you --  
 6 A. Right. Right.  
 7 Q. -- in a louder voice?  
 8 A. Right.  
 9 Q. And that's what he did to tell you what --  
 10 A. Right.  
 11 Q. -- Pete Davis had told him?  
 12 A. That's correct.  
 13 Q. All right. Was this before or after you had  
 14 heard people purchasing bonds?  
 15 MR. SHOPE: Note my objection.  
 16 A. Could you repeat the question?  
 17 Q. I thought you had said that at some point  
 18 you heard Steve Nothern and Rick Smith  
 19 giving an order to Cadogan to purchase  
 20 bonds. Did I have that correct?  
 21 A. Right.  
 22 Q. All right. This statement that Steve  
 23 Nothern said about Peter Davis --  
 24 A. Right.  
 25 Q. -- did that come before or after you hearing

1 Steve Nothern and --  
 2 A. It was before.  
 3 Q. -- Rick's Smith --  
 4 A. Right.  
 5 Q. -- telling Cadogan they wanted to purchase  
 6 bonds?  
 7 A. It was before.  
 8 Q. So the first statement you heard was Nothern  
 9 making this announcement about what he heard  
 10 from Pete Davis?  
 11 A. Correct.  
 12 Q. At this point you are on the phone?  
 13 A. Right.  
 14 Q. All right. What's the -- after Nothern  
 15 makes that statement, what's the next thing  
 16 you observe?  
 17 A. At this point, I'm on the phone and I'm  
 18 already aware that the Treasury market is  
 19 up.  
 20 Q. You are seeing some information on your --  
 21 A. I have a screen so I'm sort of like, oh, I'm  
 22 on the phone. I'm thinking, "Something is  
 23 going on," so...  
 24 Q. When you say "the Treasury market is going  
 25 up," what do you mean by that?

1 Cadogan, Steve Nothern and Rick Smith at  
 2 this point?  
 3 A. It's figuring out a number. It's collecting  
 4 orders to get to how many did we want to  
 5 buy, to -- so John can go buy them.  
 6 Q. Was there anybody who was taking the lead  
 7 and trying to find out how much everybody  
 8 wanted?  
 9 A. I mean, not -- it seemed like Steve and Rick  
 10 were putting it together.  
 11 Q. All right. And did there -- after you  
 12 observed this interaction between Nothern,  
 13 Cadogan and Rick Smith, what's the next  
 14 thing you recall occurring?  
 15 A. John Cadogan executed, you know, the trade,  
 16 bought 70 million Treasury bonds.  
 17 Q. So, by this point, you had heard whatever  
 18 Nothern wanted to purchase, whatever Rick  
 19 Smith wanted to purchase and whatever David  
 20 Kennedy wanted to purchase?  
 21 A. Right.  
 22 Q. And you told them, "I wanted to purchase 10  
 23 million"?

24 A. Right.

25 Q. How exactly did you tell them that "I wanted

1 A. I have a screen that has actual quotes and  
 2 the 30-year Treasury bond is up. I don't  
 3 know, three-quarters of a point. Something  
 4 is happening.  
 5 Q. All right. As you sit here today, do you  
 6 know how much it was going up or it had gone  
 7 up?  
 8 A. I think it was three-quarters of a point.  
 9 Q. After you see your screen and you see the --  
 10 A. Right.  
 11 Q. -- the bond going up, what's the next thing  
 12 you recall happening?  
 13 A. Well, then they're standing up and doing  
 14 something, and then I -- that -- the Pete  
 15 Davis discussion, and then they are doing  
 16 the trade, and I'm saying, you know, "I  
 17 could use 10 million."  
 18 Q. So you are saying "they're standing up," you  
 19 are referring to Steve Nothern --  
 20 A. Steve Nothern --  
 21 Q. -- and Rick Smith?  
 22 A. And John Cadogan is taking instruction.  
 23 Q. Is John Cadogan standing as well?  
 24 A. I remember him sitting, but I don't know.  
 25 Q. What's the discussion that's going on among

1 to purchase 10 million"?

2 A. I looked at John and said, "I will take 10."  
 3 Q. When you say, "I will take 10," you were  
 4 intending for him to purchase for you  
 5 10 million Treasury bonds?

6 A. That's correct.

7 Q. You see, we will get this working out at  
 8 some point today.

9 After Mr. Nothern had made this  
 10 statement about Peter Davis, did you engage  
 11 in any discussion with anybody else about  
 12 what exactly Davis had said or get any  
 13 clarification or anything like that?

14 A. No.

15 Q. Did you engage in any conversation -- after  
 16 you heard this statement that Nothern said  
 17 about Davis, but before you asked Cadogan or  
 18 anybody else to purchase 10 million, did you  
 19 get involved in any other discussion with  
 20 anybody there about what was going on?

21 A. No.

22 Q. Prior to you indicating to Cadogan that you  
 23 wanted to purchase the 10 million in bonds,  
 24 did you see anything on the news wires  
 25 indicating that the Treasury refunding

1 announcement had been released?  
 2 A. No.  
 3 Q. Had you received any e-mails or any  
 4 information from anybody in which they  
 5 indicated that the 30-year bond was going to  
 6 be cancelled?  
 7 A. No.  
 8 Q. So the only information you had that morning  
 9 that there may be a cancellation of the  
 10 30-year bond was coming from Steve Nothern?  
 11 MR. SHOPE: Objection.  
 12 A. Correct, but there had been speculation for  
 13 weeks about whether they would or not. I  
 14 mean, it was...  
 15 Q. And it had been speculation for --  
 16 A. Wall Street Journal, right.  
 17 Q. But the speculation had been going on for a  
 18 couple of years --  
 19 A. Right.  
 20 Q. -- correct? And people thought because  
 21 the --  
 22 A. The surplus.  
 23 Q. -- surplus the U.S. government was running,  
 24 that they might cancel the 30-year bond?  
 25 A. Right.

1 embargo?  
 2 A. No.  
 3 Q. Did he mention that Peter Davis had just  
 4 gotten out of a meeting?  
 5 A. No.  
 6 Q. Did he mention -- did Steve Nothern say that  
 7 -- anything about Davis mentioning a press  
 8 release was going to be issued?  
 9 A. No.  
 10 Q. Did Mr. Nothern mention that Peter Davis  
 11 said the Treasury Department was going to  
 12 make an announcement at 10 a.m.?  
 13 A. No.  
 14 Q. Did Mr. Nothern mention anything about TIPS,  
 15 Treasury Inflation Protected Securities?  
 16 A. No.  
 17 Q. Did you make any mention of a buyback?  
 18 A. No.  
 19 Q. Did Mr. Nothern make any statement about  
 20 five-year notes?  
 21 A. No.  
 22 Q. Did he mention -- did Steve Nothern mention  
 23 that Peter Davis had mentioned the name  
 24 "Peter Fisher"?.  
 25 A. No.

1 Q. Right.  
 2 A. Now we'll probably need the 50 years, 60  
 3 years, 70 year and 80 year-bonds. I'm sorry  
 4 I said that.  
 5 Q. That's because the government is now running  
 6 such huge deficits?  
 7 A. Right. I won't do that again.  
 8 Q. Did you ever -- were you working as a  
 9 portfolio manager when there had been an  
 10 announcement about a cancellation of the  
 11 20-year bond?  
 12 A. I don't remember that.  
 13 MR. ROSSETTI: We can go off the  
 14 record, take a quick break here.  
 15 THE VIDEOGRAPHER: The time is  
 16 11:50, and we are off the record.  
 17 (A recess was taken from  
 18 11:50 a.m. to 12:00 p.m.)  
 19 THE VIDEOGRAPHER: The time is  
 20 12 o'clock noon, and we are back on the  
 21 record.  
 22 Q. Mr. Kurinsky, when Mr. Nothern had made the  
 23 statement that Davis had -- when he made the  
 24 statement about what Davis had told him, did  
 25 Steve Nothern mention anything about an

1 Q. Now, you had discussed earlier this morning  
 2 that you had provided some testimony to the  
 3 Securities and Exchange Commission back in  
 4 December of 2001; is that correct?  
 5 A. That's correct.  
 6 Q. When you provided that testimony to the  
 7 Securities and Exchange Commission, was the  
 8 testimony you provided under oath?  
 9 A. It was.  
 10 Q. And was that testimony subject to any  
 11 penalty of perjury?  
 12 A. I assume it was.  
 13 Q. When you gave your investigative testimony  
 14 in December of 2001, were the events of  
 15 October 31, 2001 fresh in your mind?  
 16 A. Yes.  
 17 Q. Did your investigative testimony reflect  
 18 your knowledge of the events of -- correctly  
 19 reflect your knowledge of the events of  
 20 October 31st correctly?  
 21 A. You mean, in terms of written notes that  
 22 came out of it?  
 23 Q. No, no, no, no, no.  
 24 A. Oh.  
 25 Q. The testimony you were providing --

## **EXHIBIT E**

### **Cited Excerpts from the Deposition Transcript of David Smith (June 19, 2006)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Civil Action No.  
05-10983 (NMG)

Plaintiff.

v.

STEVEN E. NOTHERN,

Defendant.

-----X

Volume I

June 19, 2006  
New York, New York

Videotape deposition of DAVID R. SMITH, taken on behalf of the Plaintiff, at the United States Securities and Exchange Commission, WTC, 3 World Financial Center, Suite 4300, New York, New York, 10281, commencing at 10:20 a.m., June 19, 2006, before Anthony Armstrong, a Certified Shorthand Reporter of the State of New York.

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 16  
 17 Also Present:  
 18 Juan Torres, videographer  
 Steven E. Nothern  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 4

1 Proceedings  
 2 THE VIDEOGRAPHER: This is tape number one  
 3 of the videotaped deposition of Mr. David R.  
 4 Smith, in the United States -- in the matter  
 5 of United States Securities and Exchange  
 6 Commission, Plaintiff, versus Steven E.  
 7 Nothern, Defendant, in the United States  
 8 District Court for the District of  
 9 Massachusetts.  
 10 This deposition is being held at the SEC,  
 11 3 World Financial Center, New York, New York,  
 12 on June 19th, 2006, at approximately 10:20  
 13 a.m.  
 14 My name is Juan Torres from the firm of  
 15 Alderson Reporting, and I am the legal video  
 16 specialist.  
 17 Will counsel please introduce themselves  
 18 beginning with the party noticing this  
 19 proceeding.  
 20 MR. ROSSETTI: John Rossetti for the  
 21 Securities and Exchange Commission, plaintiff.  
 22 MS. WILLIAMS: Erica Williams for the  
 23 United States Securities and Exchange  
 24 Commission.  
 25 MR. THEODOROU: Nicholas Theodorou for the

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 25

1 defendant Steven Nothern.  
 2 MR. GOLDSTEIN: And Richard Goldstein for  
 3 the witness Mr. Smith.  
 4 THE VIDEOGRAPHER: Will the court reporter  
 5 please swear in the witness.  
 6 D A V I D S M I T H, a witness, having first been duly  
 7 sworn, testified as follows:  
 8 DIRECT EXAMINATION  
 9 BY MR. ROSSETTI:  
 10 Q. Good morning, Mr. Smith. Could you state your  
 11 full name and spell it for the record.  
 12 A. Sure. My name is David Richard Smith, III.  
 13 That's D-A-V-I-D, R-I-C-H-A-R-D, S-M-I-T-H.  
 14 Q. And can you please state your Social Security  
 15 number.  
 16 A. 019-52-4761.  
 17 Q. And your present address, please.  
 18 A. 4 Mohawk Street, Rye, New York, 10580.  
 19 Q. What is your telephone number, present  
 20 telephone number?  
 21 A. Sure. 914-967-0104.  
 22 Q. Is that a home number?  
 23 A. Home number, yes.  
 24 Q. Do you have a cell number as well?  
 25 A. I do.

Page 138	Page 140
1       MR. GOLDSTEIN: Yeah.	1       he?
2       MR. ROSSETTI: -- from the 9 a.m. meeting.	2       A. I believe he was -- I believe he was at his --
3       MR. THEODOROU: Objection.	3       I believe Steve was at his trading station No. 241.
4       A. I don't recall any specific conversations I	4       Q. And was he sitting or standing in 241?
5       had with Steve Nothern.	5       A. I don't recall.
6       BY MR. ROSSETTI:	6       Q. Let me have you turn back to Exhibit 6, which
7       Q. Any general conversations you recall?	7       is the copy of your transcript.
8       A. No.	8       A. Okay.
9       Q. Did there come a point in time when you had	9       Q. And I will have you turn to page 59.
10      any discussions with Mr. Nothern about the 30th year	10      A. Okay.
11      bond?	11      Q. Let me know when you get to 59 and I will
12      MR. THEODOROU: When?	12      further direct you.
13      MR. ROSSETTI: On October 31st, 2001.	13      A. Okay.
14      A. There was a point in time that I do recall	14      Q. I want to have you start reading from line 11
15      Steve being back at the desk. I do recall him being	15      there. Do you see that?
16      next to me. I do recall something about Pete Davis and	16      A. Yes.
17      elimination of the bond.	17      Q. Okay. And I will have you read down to the
18      Q. When you say the bond, what do you mean, the	18      next page on page seven.
19      long bond, the 30th year bond?	19      A. From 59 to 60 on page seven?
20      A. The bond is industry -- industry terminology	20      Q. That's correct.
21      for the US Treasury 30th year long bond -- 30 year	21      A. Can you remind me on page 59 what line I'm
22      maturity bond.	22      supposed to --
23      Q. You said that Steve Nothern was back at his	23      Q. Line 11.
24      desk?	24      A. Line 11?
25      A. Uh-huh.	25      Q. Yes.
Page 139	Page 141
1       Q. When you say back at his desks, is that -- let	1       A. To seven on 60?
2       me hand you Exhibit 3.	2       Q. That's correct.
3       A. Uh-huh.	3       A. Okay.
4       Q. Are you referring to the area that's marked	4       (Perusing.)
5       241 on Exhibit 3?	5       Q. Actually I'm going to have you go down to line
6       A. Yes, I believe that's correct.	6       16 on 60.
7       Q. Was he away from his desk prior to that that	7       A. Okay.
8       you noticed?	8       (Perusing.)
9       MR. THEODOROU: Objection.	9       Q. I'm sorry. I'm just going to have you read
10      A. I believe he was.	10      eight lines down further on 24. I apologize.
11      Q. Alright. What happened after he returned to	11      A. Okay. Let's try again here.
12      his desk?	12      (Perusing.)
13      A. I believe that he was -- the tough part about	13      Okay, I have read it.
14      this is you don't know what's going on at that moment	14      Q. Okay. You had testified that your
15      or what you'll learn later. But I believe he was	15      recollection of what Mr. Nothern said was something
16      either on the phone or checked his messages and then,	16      about Pete Davis and elimination of the bond.
17      you know, he stated there was kind a Pete Davis, bond	17      After reading this section of the transcript
18      elimination was part of the conversation.	18      that I just asked you to read -- you've read that, by the
19      Q. Specifically, what did he state --	19      way?
20      MR. THEODOROU: Objection.	20      A. Yes, I have just read it.
21      Q. -- about Steve Nothern stating --	21      Q. Okay. I went just want to make sure that
22      A. I think I shared with you about the degree of	22      have.
23      precision that I can share about that matter.	23      A. Yes.
24      Q. Okay. And when he was making this statement	24      Q. After reading that section of the transcript,
25      about Pete Davis and elimination of the bond, where was	25      does it refresh your memory as to any other details of

1 what Mr. Nothern said that morning?

2 A. I think the additional piece of information  
3 was that they had just got out of some meeting which  
4 seems like the piece of information I did not mention a  
5 few moments ago.

6 Q. And after reading this transcript, that  
7 refreshes your recollection as to that point?

8 MR. THEODOROU: Objection.

9 Q. I'm sorry?

10 A. I believe that's correct, yes.

11 Q. Okay. So when -- having read that transcript,  
12 what is it you can recall now that Steve Nothern said  
13 on October 31st, 2001?

14 A. Right. I think probably approximately the  
15 same that I mentioned before: That, you know, there  
16 was a kind of blurb about the bond elimination, Pete  
17 Davis. You know I can't quote him directly of what  
18 exactly he said.

19 Q. You can't quote --

20 A. -- to either me or the group. I cannot quote  
21 Steve Nothern directly. I cannot even tell you that he  
22 was speaking directly at me at that time. I do believe  
23 that there was elimination, Pete Davis, bond.

24 You have refreshed my memory that it had  
25 something to do with the meeting at that point in time,

1 believe it by the time you heard it.

2 Q. But what was your understanding as to the  
3 substance of what Nothern was saying --

4 A. Right.

5 Q. -- about Pete Davis and the bond?

6 MR. THEODOROU: Objection.

7 A. What was the substance of what he was saying?

8 Q. Yes. What did you understand to be the

9 substance of what Steve Nothern was saying about Pete  
10 Nothern -- Pete Davis --

11 A. Pete Davis, yes.

12 Q. -- and the thirty year bond?

13 MR. THEODOROU: John Nothern.

14 MR. ROSSETTI: I'm sorry?

15 MR. THEODOROU: John Nothern.

16 A. Are you talking about at that moment in time  
17 what was I thinking about, or right now thinking about  
18 it what are the possible interpretations to what you  
19 are talking about?

20 Q. Putting yourself back in time on  
21 October 31st, 2001, you said that you -- Steve Nothern  
22 made a statement, Pete Davis, elimination --

23 A. Right.

24 Q. -- thirty year bond? And you also were  
25 refreshed that Davis had just gotten out of the

1 but I do remember what I have just shared with you.

2 Q. And what was your understanding as to what  
3 that all meant?

4 MR. THEODOROU: Objection.

5 Q. -- of what --

6 A. Right.

7 Q. Steve Nothern had said to you, what was your  
8 understanding of what that meant?

9 MR. THEODOROU: Objection.

10 A. Right. At that moment in time?

11 Q. Yes.

12 A. I don't recall it meaning a lot to me. I  
13 recall -- you know, I recall hearing the information.  
14 And, you know, I don't remember thinking, oh, wow,  
15 that's like a really great new piece of information, or  
16 something like that. I kind of heard it and didn't  
17 really get too excited about it.

18 Q. Did you understand, though, that the substance  
19 of it was that Pete Davis was indicating that the  
20 thirty year bond was going to be eliminated?

21 MR. THEODOROU: Objection.

22 A. I think there had been talk in the marketplace  
23 about the elimination of bond for an extended period of  
24 time. It's kind of one of those old stories you  
25 probably heard so many times and probably didn't

1 meeting --

2 A. A meeting or something, yeah, yeah.

3 Q. What did you --

4 A. Right.

5 Q. What was your understanding of what that meant  
6 at that time, October 31st, 2001?

7 MR. THEODOROU: Objection, asked and  
8 answered.

9 Q. You can answer.

10 A. Okay. I think at that there is some  
11 recognition of what he was talking about, but there was  
12 not a real revelation or tremendous amount of thought  
13 gone into what was said.

14 Q. But what was your recognition of what he was  
15 saying -- what Steve Nothern was saying?

16 MR. THEODOROU: Objection.

17 A. I don't know if I really --

18 Q. Well, did you --

19 A. Yeah --

20 Q. Steve Nothern mentions Pete Davis gets out of  
21 the meeting and says that -- the thirty year bond is  
22 going to be eliminated.

23 A. Uh-huh.

24 Q. What did you take that to mean?

25 MR. THEODOROU: Objection.

1 MR. ROSSETTI: You could ask him on  
 2 cross-examination.  
 3 MR. THEODOROU: Clearly it says perhaps  
 4 likely --  
 5 MS. WILLIAMS: We read that part into the  
 6 record.

7 BY MR. ROSSETTI:

8 Q. Mr. Smith, the -- your decision to purchase  
 9 bonds, the 5 million bonds on October 31st, 2001 --

10 A. Yes.

11 Q. -- it was motivated for however percentile you  
 12 would want to assign it by -- in part by Mr. Nothern's  
 13 statement about P. Davis and elimination of the bond;  
 14 is that correct?

15 MR. THEODOROU: Objection.

16 A. I would not say it was motivated by Steve  
 17 Nothern's statement.

18 Q. You're saying by any degree?

19 A. I think that it was something that was  
 20 mentioned in the conversation. If something was talked  
 21 about in the room, it's very difficult to say it's  
 22 zero. But I would say if he had said that and the  
 23 market was trading down, you know, I wouldn't have  
 24 bought it, you know. The way I was looking at it was I  
 25 had a market that I was short that was running away

1 from me and there was enough damage for something that  
 2 I really didn't understand what was going on.

3 I mean we're talking about an environment  
 4 that's October '01 after we went through September 11th  
 5 of '01. And I remember that -- one thing I do remember  
 6 is on 9 o'clock in the morning September 11th, '01 the  
 7 market traded up like crazy. From a pure portfolio  
 8 management standpoint, it was one of the best  
 9 opportunities to make money of that year because the  
 10 market was open and was trading up. So there were times  
 11 that there are things that go on in the marketplace that  
 12 technicals take over and starts running, you don't know  
 13 what's going on.

14 And I look backwards at that information in  
 15 September of '01 and said that be it nimble at that one  
 16 important time could have been something that made my  
 17 year. I mean as someone whose job is to look at the  
 18 portfolio, for all I know it could have been another  
 19 terrorist attack going on, you know.

20 Q. Are you stating here today that Mr. Nothern's  
 21 statement about elimination of the bond didn't play any  
 22 factor at all in your decision to purchase bonds on  
 23 October 31st, 2001 you'd told Catigan make it 65?

24 MR. THEODOROU: Objection.

25 MR. GOLDSTEIN: I'm going to object to

1 that also.

2 A. Yes.

3 MR. ROSSETTI: We'll go off the record.

4 It's --

5 THE VIDEOGRAPHER: The time is 3:28 p.m.  
 6 This ends Tape No. 4 of the videotaped  
 7 deposition of Mr. David R. Smith.

8 (There was a recess.)

9 \*\*\*\*\*

10 THE VIDEOGRAPHER: The time is 3:40 p.m.  
 11 This begins Tape No. 5 of the videotaped  
 12 deposition of Mr. David R. Smith.

13 BY MR. ROSSETTI:

14 Q. Mr. Smith, did the statement from Mr. Nothern  
 15 about the elimination of the bond play any role in your  
 16 decision to buy 5 million bonds?

17 MR. THEODOROU: Objection.

18 A. I believe that it was something that was  
 19 discussed in the time period approximately associated  
 20 with the trading, and I think there were a large  
 21 variety of factors. I don't believe that it was  
 22 something I was thinking a lot about, but I do  
 23 recognize it was something that was mentioned in the  
 24 room, so I can't say it was zero, but I can also say  
 25 that it wasn't a major part of my decision-making

1 process.

2 Q. Now, did the statement from Mr. Nothern about  
 3 the elimination of the bond, was it one of the factors  
 4 that entered into your decision to purchase  
 5 50 million -- 5 million in bonds?

6 MR. THEODOROU: Objection.

7 A. I would repeat the same response that I had  
 8 said to you in my previous response.

9 Q. You had mentioned that there was an extended  
 10 period of discussion about the elimination of the  
 11 thirty year bond.

12 Can you explain what you meant by that?

13 A. I don't recall there was an extended  
 14 discussion about the elimination of the thirty year  
 15 bond.

16 Q. Let me put this way: Prior to October 31st,  
 17 had you ever heard anything about the possible  
 18 elimination of the 30 year bond?

19 A. I believe there were rumors in the marketplace  
 20 about the possible elimination.

21 Q. Prior to October 31st, 2001, when was the last  
 22 time you had heard any rumors about the possible  
 23 elimination of the 30 year bond?

24 A. I don't recall.

25 Q. Upon hearing those other rumors about possible

1 elimination of the 30 year bond, did you buy any bonds  
 2 as a result of hearing those rumors?  
 3 A. I don't recall.  
 4 Q. The rumors that you did hear prior to  
 5 October 31st, 2001, over what period of time did  
 6 they -- had you been hearing those?  
 7 A. I don't recall.  
 8 Q. Was it a matter of years you were hearing  
 9 this?  
 10 MR. THEODOROU: Objection, asked and  
 11 answered.  
 12 A. I don't recall. Yeah.  
 13 Q. Matter of months?  
 14 A. I don't recall specifically.  
 15 Q. Okay. You said there was -- when I was just  
 16 asking you questions about whether the Northern  
 17 statement played a role, you had mentioned something  
 18 that there was a discussion.  
 19 What discussion were you referring to?  
 20 MR. THEODOROU: Objection.  
 21 A. I don't know what you are talking about.  
 22 Q. You had -- I thought you had said that there  
 23 was a discussion about the bond, and I was -- did I not  
 24 hear that correctly?  
 25 A. What you're saying is not triggering anything

1 that we have talked about today.  
 2 Q. Okay.  
 3 A. Yes.  
 4 Q. Now, after you said to Mr. Catigan -- withdraw  
 5 that.  
 6 When you heard Catigan say -- state in his loud  
 7 voice buy 60 --  
 8 A. Offer 60.  
 9 Q. Offer 60. Where were you?  
 10 A. Sitting at my desk.  
 11 Q. And when you told Catigan make it 65, were you  
 12 seated? Did you stand up?  
 13 A. I don't recall.  
 14 Q. How did you communicate that to Catigan?  
 15 A. Verbally.  
 16 Q. Did you shout it out make it 65?  
 17 A. Correct.  
 18 Q. What's -- what happened after you said make it  
 19 65?  
 20 A. He -- I believe he asked the broker-dealer to  
 21 refresh the offering for an amount of 65 million.  
 22 Q. How long after he had said offer 60 did he  
 23 refresh his offer and say make it 65?  
 24 A. I think when he was saying can you offer me  
 25 60 million bonds, I kind of looked up and I said, John,

1 make it 65. I think it was -- I thought it was pretty  
 2 quick.  
 3 Q. So a few seconds perhaps?  
 4 MR. THEODOROU: Objection.  
 5 A. I would be speculating if I said anything more  
 6 than what I said I think.  
 7 Q. Well, after he said offer 60, did you sit  
 8 there contemplating it or did you immediately react and  
 9 say offer 65?  
 10 MR. THEODOROU: Objection.  
 11 A. I don't recall.  
 12 Q. After you said make it 65, what did you  
 13 hear -- did you hear Catigan actually offer 65?  
 14 A. He asked the salesperson on the line can you  
 15 make it 65.  
 16 Q. What was the response?  
 17 MR. THEODOROU: Objection.  
 18 A. I don't know. He was on the telephone with  
 19 the broker. I don't know what was being said on the  
 20 other end of the line.  
 21 Q. Did Mr. Catigan take any steps to acknowledge  
 22 that the -- he had gotten the offer in for the 65 --  
 23 acknowledge to you?  
 24 A. I think -- as I said before, what was going on  
 25 at that point in time was the market was really

1 starting to move up pretty rapidly. And I do recall  
 2 that there was -- you know, sometimes you look at  
 3 government bond markets, it will say 10 plus 11 on the  
 4 screen. You say offer a large amount of securities.  
 5 Say offer them at 11. And using my example, I have no  
 6 idea what the price was. This is illustrative.  
 7 I do recall a market that was moving, and I  
 8 don't think that Merrill Lynch, or whoever the broker  
 9 was, was very fast at making the offering. Typical in a  
 10 volatile market the trader is put at risk and they are  
 11 slower. They want the market to settle down before they  
 12 make the offering. And as I recall, the market was  
 13 rallying quite a bit that day. It was at a point where  
 14 he probably felt that I offer it at X price, by the time  
 15 you say done, it would be higher.  
 16 It was one of those times that things were just  
 17 moving on its own. So I do recall that John was -- John  
 18 was saying do you have an offering. So it wasn't -- it  
 19 wasn't like immediate, you know. It wasn't like a calm  
 20 market. It took some time.  
 21 Q. Did he get a confirmation, though, about the  
 22 65?  
 23 MR. THEODOROU: Objection.  
 24 Q. Catigan, that is.  
 25 A. I believe he was offered a price that I

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1 say it was not frequent, you know, like -- I would just  
 2 like to leave it at that. Not frequent.

3 Q. Was it once a year, twice a year, more often  
 4 than that per year?

5 MR. THEODOROU: Objection.

6 A. I couldn't say the frequency. It's not  
 7 something I kept track of. I --

8 Q. Okay. At any time, October 31st, 2001, did  
 9 you hear Nothern state anything that the information he  
 10 got from Peter Davis, Peter Davis had gotten from Peter  
 11 Fisher?

12 MR. THEODOROU: Objection.

13 A. I don't think I heard the word Peter Fisher  
 14 that morning.

15 Q. Did you hear the term embargo from Steve  
 16 Nothern before you traded on October -- before you  
 17 asked Catigan to increase the 65?

18 A. No.

19 Q. Did you hear the term embargo from Nothern at  
 20 all that day?

21 A. No.

22 Q. Did you hear from Nothern that day that there  
 23 would be -- that the information would be --  
 24 information about the elimination of the bond would be  
 25 released at 10 o'clock that day?

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1 A. No.

2 Q. Did Nothern indicate anything to you that led  
 3 you to believe that the information about the bond was  
 4 confidential to a certain time?

5 MR. THEODOROU: Objection.

6 A. No.

7 Q. Did Nothern say anything that the source of  
 8 the information from Davis was the Treasury Department?

9 MR. THEODOROU: Objection.

10 A. No.

11 Q. Did you come -- did you come to learn after  
 12 you placed -- you told Catigan to increase the  
 13 65 million how was it that Nothern had gotten  
 14 information from Davis?

15 MR. THEODOROU: Objection.

16 A. Did I know?

17 Q. Did you learn.

18 A. When?

19 Q. At any time after you told Catigan to place  
 20 65 -- to order -- to offer 65. I'm sorry.

21 A. After did I learn?

22 Q. Yeah. At any point after you told Catigan  
 23 offer 65 --

24 A. Right.

25 Q. -- did you learn how it was that Nothern got

1 this information from Davis?

2 MR. THEODOROU: Objection.

3 Q. Peter Davis.

4 MR. GOLDSTEIN: I would just caution the  
 5 witness not to disclose any information you  
 6 might have learned from counsel.

7 THE WITNESS: Yeah.

8 A. Sorry. A few distractions here.

9 I -- can you repeat it one more time?

10 Q. Yes. After you placed the -- or after you  
 11 told Catigan offer 65 --

12 A. Right.

13 Q. Any time after that, did you learn how it was  
 14 that Nothern got the information from Pete Davis the  
 15 information --

16 MR. THEODOROU: Objection.

17 A. I believe there was -- I believe it was in the  
 18 newspaper.

19 Q. And what did you learn from the newspaper?

20 MR. THEODOROU: Objection.

21 A. I think the newspaper said that Davis had  
 22 called a variety of people.

23 Q. Did you learn if Nothern had actually spoken  
 24 with Davis that important?

25 MR. THEODOROU: Objection.

**EXHIBIT F**

**Cited Excerpts from the Deposition Transcript  
of David Kennedy  
(June 26, 2006)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

)  
UNITED STATES SECURITIES AND )  
EXCHANGE COMMISSION, )  
Plaintiff, )  
)  
vs. )  
)  
STEVEN E. NOTHERN, )  
Defendant. )  
C.A. 05-10983 (NMG)

VIDEOTAPED DEPOSITION OF DAVID  
KENNEDY, a witness called on behalf of the  
Plaintiff, pursuant to the provisions of the  
Massachusetts Rules of Civil Procedure,  
before Jill Shepherd, Registered  
Professional Reporter and Notary Public, in  
and for the Commonwealth of Massachusetts,  
at the offices of U.S. Securities and  
Exchange Commission, 33 Arch Street, Boston,  
Massachusetts, on Monday, June 26, 2006,  
commencing at 10:18 a.m.

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1 APPEARANCES:  
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 24  
 25

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 24  
 25

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1 APPEARANCES, CONTINUED  
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 11  
 12  
 13 ALSO PRESENT: RALPH SCOPA, VIDEOGRAPHER  
 14  
 15  
 16 \* \* \* \* \*

Page 5

1 PROCEEDINGS  
 2 (Exhibit Nos. 1-3 marked)  
 3 THE VIDEOGRAPHER: We are now  
 4 recording and on the record. My name is  
 5 Ralph Scopa. I am a legal video specialist  
 6 for G & M Court Reporters, Limited. Our  
 7 business address is 42 Chauncy Street,  
 8 Boston, Mass., 02111.  
 9 Today's date is June 26, 2006. The  
 10 time is 10:18 a.m. This is the deposition  
 11 of David Kennedy in the matter of the  
 12 Securities and Exchange Commission vs.  
 13 Nothern, U.S. District Court, District of  
 14 Massachusetts. Civil action: 05-10983  
 15 (NMG).  
 16 This deposition is being taken at the  
 17 Securities and Exchange Commission,  
 18 33 Arch Street, Boston, Mass.  
 19 The court reporter is Jill Shepherd.  
 20 Counsel will state their appearances and the  
 21 court reporter will administer the oath.  
 22 MR. ROSSETTI: John Rossetti for  
 23 the Plaintiff, United States Securities and  
 24 Exchange Commission.  
 25 MS. WILLIAMS: Erica Williams for

1 Q. Where was that TV?  
 2 A. It was directly behind me.  
 3 Q. And --  
 4 A. Hanging from the ceiling.  
 5 Q. Was that TV on during the workday?  
 6 A. Yes.  
 7 Q. Was the sound up on it?  
 8 A. No.  
 9 Q. Did you use the TV to get -- as a source of  
 10 information during the course of your  
 11 workday?  
 12 A. Not often.  
 13 Q. Did you glance up at it occasionally during  
 14 a workday?  
 15 A. Rarely.  
 16 Q. Do you know who did, if anybody?  
 17 A. No.  
 18 Q. Okay. Was it tuned to any particular  
 19 channel?  
 20 A. Yeah.  
 21 Q. What channel was that?  
 22 A. I believe it was MSNBC. I think that's what  
 23 it was. Anyone could have changed the  
 24 station and I would not have known it.  
 25 Q. Well, if there were guys present in the room

1 Q. After October 31st?  
 2 A. Yes.  
 3 Q. What have you taken?  
 4 A. With my current employer, I took the -- Oh,  
 5 series 55, 53. Something like that. We  
 6 don't really use it, so I have to kind of  
 7 take it and forget about it.  
 8 Q. Okay. On October 31, 2001, you said you  
 9 looked over your -- let me withdraw that.  
 10 You indicated that your typical day at work,  
 11 you'd come in and you'd look at the  
 12 portfolios and see that the trades were  
 13 done.  
 14 Would you make any determination  
 15 during the course of the day that you had  
 16 funds that you wanted to invest that day?  
 17 MR. SHOPE: I'm sorry, could I have  
 18 the question reread.  
 19 (Question read.)  
 20 A. Yes.  
 21 Q. When, during the course of the day, would  
 22 you make that determination?  
 23 A. I would be -- watch how much cash was  
 24 available in each portfolio and whether I  
 25 thought it was too little or too much.

1 and there was a remote control, I'm sure  
 2 somebody was changing it, right?  
 3 A. Whenever there was golf, it would have been  
 4 on.  
 5 Q. In your time in the industry, have you taken  
 6 any professional exams?  
 7 A. Yes.  
 8 Q. What professional exams?  
 9 A. I held my series 7 from 1985, I think, 1987.  
 10 Q. What was a series 7?  
 11 A. It's the -- you will know this better than  
 12 I. It's the broker's, you know, sales  
 13 license.  
 14 Q. Did you have any other professional exams  
 15 that you passed?  
 16 A. There was one other that went with it, and I  
 17 don't remember the designation.  
 18 Q. Series 65?  
 19 A. 65.  
 20 Q. And what did a series 65 do?  
 21 A. I don't remember.  
 22 Q. Were there any others that you have taken?  
 23 A. No.  
 24 Q. Do you have a series 65?  
 25 A. Not prior to October 31st.

1 Q. On October 31, 2001, had you made any  
 2 determination of how much cash you had?  
 3 A. I only remember from what I have read in my  
 4 transcript that there was cash available.  
 5 Q. Okay. If you didn't have cash available,  
 6 would you be able to make purchases?  
 7 A. Yes.  
 8 Q. And how would you pay for those purchases if  
 9 you didn't have cash available?  
 10 A. I could sell something else.  
 11 Q. I see. On October 31, 2001, did you hear  
 12 information about the Treasury Department's  
 13 30-year bond?  
 14 A. Yes.  
 15 Q. All right. When was the first time you  
 16 heard anything about the Treasury  
 17 Department's 30-year bond on October 31,  
 18 2001?  
 19 A. When Steve Nothern said he had heard the  
 20 Treasury was going to eliminate the 30-year  
 21 Treasury.  
 22 Q. And did he say who he heard that from?  
 23 A. I think my memory was better when I gave my  
 24 first deposition, and I think according to  
 25 that it was that Pete Davis had told him

1 that the Treasury was going to eliminate the  
 2 30-year Treasury.  
 3 Q. Did you know -- well, approximately what  
 4 time was it that Steve Nothern made this  
 5 statement?  
 6 A. Again, I'd have to refer to my transcript.  
 7 Q. Okay.  
 8 A. I just don't remember.  
 9 Q. All right. Why don't you go ahead and do  
 10 that and let me see if I can help you with  
 11 the page.  
 12 A. (Witness reading.)  
 13 Q. Well, you know, on that specific question,  
 14 we're going to come back to that --  
 15 A. Okay.  
 16 Q. -- and just move on to some other questions  
 17 regarding that.  
 18 When -- as you sit here today, what do  
 19 you recall is it that Steve Nothern said?  
 20 A. Again, my memory has been refreshed by the  
 21 transcript that, you know, Steve said, you  
 22 know, "I heard from Pete Davis that the  
 23 Treasury was going to eliminate the 30-year  
 24 Treasury."  
 25 Q. And had you -- prior to Steve Nothern making

1 A. I don't remember.  
 2 Q. Where were you just prior to Nothern making  
 3 that statement?  
 4 A. I was sitting at my station.  
 5 Q. And that would have -- as you look at  
 6 Exhibit 4, that would have been station 243?  
 7 A. Yes.  
 8 Q. What would you say the approximate distance  
 9 from where you have noted Steve Nothern was  
 10 to where you were?  
 11 A. 10 feet.  
 12 Q. And how loud was the statement; you know,  
 13 what level of voice did he make that  
 14 statement in?  
 15 A. It was loud enough for me to hear it.  
 16 Q. When you heard it, did you hear it well or  
 17 did it seem faint to you?  
 18 MR. SHOPE: Objection.  
 19 A. It was clear.  
 20 Q. Okay. What did you do when you heard that  
 21 statement?  
 22 A. I don't remember specifically what I did  
 23 after. A conversation ensued about the  
 24 Treasury and what we should do.  
 25 Q. A conversation ensued between whom?

1 this statement, had you ever heard the name  
 2 Pete Davis?  
 3 A. No.  
 4 Q. And referring to Exhibit 4, can you indicate  
 5 for me on that exhibit where Steve Nothern  
 6 was when he made that statement?  
 7 A. I remember Steve standing roughly behind  
 8 Rick Smith's position.  
 9 Q. Let me hand you a pen and write the initials  
 10 "SN" for Steve Nothern, where he was.  
 11 A. Okay. (Witness complies.)  
 12 Q. Okay. And you've just circled that?  
 13 A. I have.  
 14 Q. We'll have the record reflect that the  
 15 witness has drawn in the initials "SN" and  
 16 circled it in the station between Nothern  
 17 and Smith, a little closer to Smith's  
 18 location.  
 19 MR. SHOPE: May I take a look at  
 20 that.  
 21 MR. ROSSETTI: Sure.  
 22 Q. And was he standing at that location?  
 23 A. Yes.  
 24 Q. Just prior to Mr. Nothern making that  
 25 statement, what were you doing?

1 A. Steve Nothern, Rick Smith, Geoff Kurinsky,  
 2 myself. That's what I remember.  
 3 Q. And what did you -- what was stated during  
 4 this discussion?  
 5 A. What we should do. Whether we should buy or  
 6 not buy the Treasury, the 30-year Treasury.  
 7 Q. What did you say?  
 8 A. I don't remember specifically what...  
 9 Q. Did Steve Nothern say anything?  
 10 A. I do recall at one point saying, "Well, what  
 11 are we going to do?" Or "What are you going  
 12 to do?" And, you know, Steve saying, "I'm  
 13 going to buy the Treasury" --  
 14 Q. When you say --  
 15 A. -- "the 30-year Treasury."  
 16 Q. Okay. The 30-year Treasury bond, is that --  
 17 A. Yes.  
 18 Q. Did Smith say anything?  
 19 A. At some point, he put in an order to buy --  
 20 Q. Smith?  
 21 A. -- Smith put in an order to buy the 30-year  
 22 Treasury bond with John Cadogan.  
 23 Q. Do you know how many Rick Smith put in an  
 24 order with Cadogan?  
 25 A. I don't remember.

1 A. Yes.  
 2 Q. Does that refresh your memory as to anything  
 3 else that Steve Nothern stated about who  
 4 Peter Davis was?  
 5 A. Yes. I think it's a fair recollection of  
 6 the comments.  
 7 Q. And with your memory now refreshed, what  
 8 else is it that Nothern stated about Davis?  
 9 A. What it says in here, well-connected in  
 10 Washington, served on the committees, and  
 11 this is what I remember.  
 12 Q. Okay. After you placed the order with John  
 13 Cadogan, did you get any acknowledgment from  
 14 Cadogan that the trade had been placed and  
 15 executed?  
 16 MR. SHOPE: Objection to the form.  
 17 A. I don't remember specifically, but he  
 18 probably told us at what level he bought  
 19 them, at what price.  
 20 Q. How soon after you placed the order did you  
 21 get an acknowledgment from Nothern [sic]  
 22 that the trade had been placed?  
 23 MR. SHOPE: Objection.  
 24 A. Do you mean John Cadogan?  
 25 Q. John Cadogan, I'm sorry.

1 A. In practice, most often, that's the way it  
 2 worked, but it was not uncommon -- John  
 3 Cadogan sat directly across from me -- that  
 4 I would say, "John buy X and I'm putting it  
 5 in the system right now."  
 6 Q. When you made this order, you told Cadogan  
 7 to purchase 25 million bonds. At that  
 8 point, did you put the information into the  
 9 FITS system?  
 10 A. I don't remember putting it in the system  
 11 immediately.  
 12 Q. Okay. Did you do it sometime that day?  
 13 A. Yes.  
 14 Q. When was it that you put it in the system  
 15 that day?  
 16 A. I didn't remember until I saw a document  
 17 that it was sometime after 10 o'clock. Now,  
 18 part of why I didn't put it in was because  
 19 there was a portfolio manager not on the  
 20 desk, that was Peter Vaream. We -- after  
 21 placing our trades, we then kind of looked  
 22 around and said, "Peter is not here. Peter  
 23 would want some of the 30-year Treasury." I  
 24 had put in an order for 25, but then decided  
 25 to give Peter two. So eventually I only put

1 MR. SHOPE: Note my objection.  
 2 A. I doubt much time passed. I don't remember  
 3 specifically.  
 4 Q. I withdraw that. Actually, there's nothing  
 5 to withdraw.  
 6 Are you familiar with a system at MFS  
 7 called the "fixed-income trading system"?
 8 A. Yes.  
 9 Q. And can you tell me what that system was at  
 10 MFS?  
 11 A. It was an online portfolio management tool  
 12 where you could access your portfolios'  
 13 security holdings and you could -- it was  
 14 the instrument by which you traded.  
 15 Q. And who created that system?  
 16 A. I believe it was MFS-created internally.  
 17 Q. And, excuse me, in order to have a trade  
 18 executed, did you need to have information  
 19 put in this fixed-income trading system  
 20 before any action could be done on a trade?  
 21 A. In theory, you were supposed to enter the  
 22 trade through the FITS system. It would  
 23 then go to the traders and the traders would  
 24 see it and then execute the trade.  
 25 Q. How did it work in practice?

1 in an order into the FITS system for \$23  
 2 million.  
 3 Q. At any point on October 31st did you have a  
 4 conversation with Peter Vaream about you  
 5 reserving two million of your 25 million  
 6 purchase for his accounts?  
 7 A. Yes.  
 8 Q. What did you and he discuss?  
 9 A. I don't remember the specifics. It was some  
 10 time later he returned to the desk and he  
 11 was made aware of the purchases.  
 12 Q. You have been recounting to us that Steve  
 13 Nothern had gotten up and made this  
 14 statement and there was some discussion and  
 15 you purchased bonds. Did you relay that to  
 16 Vaream?  
 17 A. I don't remember.  
 18 Q. The -- prior to October 31, 2001, had you  
 19 heard any information that the Treasury may  
 20 be cancelling the 30-year bond?  
 21 A. Yes.  
 22 Q. When did you hear that information?  
 23 A. This had been an ongoing story for 12 or 18  
 24 months, that it was financially feasible  
 25 that the Treasury would cancel or eliminate

1 the 30-year Treasury as the government  
 2 surplus -- it actually was a surplus -- at  
 3 one point, the Treasury yield curve was flat  
 4 and it just didn't make sense to issue  
 5 30-year bonds. So it had been discussed in  
 6 different strategy pieces. It had been  
 7 discussed at Harbor Capital before I went to  
 8 MFS.

9 Q. You mentioned that there was a government  
 10 surplus. A government surplus of what?

11 A. That they were taking in more revenues than  
 12 they were spending.

13 Q. The good old days, right?

14 A. Good old days.

15 Q. And you mentioned this yield curve. What do  
 16 you -- when you said "yield curve," what are  
 17 you talking about?

18 A. The "yield curve" is nothing but a graphical  
 19 representation of the Treasury yields going  
 20 from the 90-day T-bill to the 30-year, and  
 21 if you graph it along a plot, you have the  
 22 yield curve.

23 Q. So would it be fair to say as a result of  
 24 the government surplus, it was one of the  
 25 things that was driving this discussion

1 about the elimination of the bond, 30-year  
 2 bond?

3 MR. SHOPE: I'm sorry, can I have  
 4 that reread?

5 (Question read.)

6 MR. SHOPE: Objection to the form.  
 7 I don't think that's really a question.

8 MR. ROSSETTI: Yeah.

9 Q. So was it this discussion about -- or the  
 10 fact that the government was running  
 11 surpluses, budget surpluses, was that one of  
 12 the factors that was driving this discussion  
 13 about the potential cancellation of the  
 14 bond?

15 A. Yes.

16 Q. Now, when Nothern made this statement that  
 17 he had heard from Davis that the bond was  
 18 going to be eliminated, what was his tone of  
 19 voice?

20 A. Matter of fact.

21 MR. GOLDSTEIN: By that, you mean  
 22 Nothern's tone of voice?

23 MR. ROSSETTI: Nothern's tone of  
 24 voice.

25 A. Yes.

1 Q. Nothern's voice was matter of fact?

2 A. Yes.

3 Q. Did there come a point in time on October  
 4 31, 2001 that you learned that the Treasury  
 5 had actually announced that they were going  
 6 to cancel the 30-year bond?

7 A. Yes.

8 Q. When was that?

9 A. I recall that John Cadogan announced that it  
 10 had appeared on the Treasury website.

11 Q. What time was it that John Cadogan made that  
 12 announcement?

13 A. I don't remember.

14 Q. Did John Cadogan state if he had gone to the  
 15 website to see for himself?

16 A. I don't remember if he did himself.

17 Q. And did John Cadogan state where he had  
 18 learned that information?

19 A. I don't remember.

20 Q. Did you go visit the Treasury Department's  
 21 website?

22 A. No, I did not.

23 Q. Did John Cadogan make that statement before  
 24 you placed the order for the bonds?

25 A. It was after.

1 Q. How much after you placed the order for the  
 2 bonds did Cadogan make that statement?

3 A. I don't remember.

4 Q. Was it a matter of minutes?

5 MR. SHOPE: Objection.

6 A. Well, minutes, 20 minutes, five minutes? I  
 7 mean, I don't remember. It was after the  
 8 orders were placed.

9 Q. Okay. When you heard from -- when you heard  
 10 Cadogan make the statement that the  
 11 cancellation of the bond or elimination of  
 12 the bond was posted on the Treasury website,  
 13 did you connect that at all with the  
 14 statement that Nothern had made earlier?

15 A. Yes.

16 Q. And what connected it in your mind?

17 A. I guess it's true.

18 Q. When Nothern made this statement that he had  
 19 heard from Peter Davis that the Treasury was  
 20 going to eliminate the bond, did he mention  
 21 the name Peter Fisher?

22 A. Not that I remember.

23 Q. On October 31, 2001, prior to you placing  
 24 the trade, did you know who Peter Fisher  
 25 was?

1 A. Yes.  
 2 Q. Who was Peter Fisher?  
 3 A. To the best of my recollection, Peter Fisher  
 4 at one time worked for the Treasury in  
 5 New York City, made some headlines with the  
 6 Long-Term Capital Management hedge fund  
 7 issue, and then at some point his career  
 8 moved from the New York office to  
 9 Washington.  
 10 Q. Do you know if he was with the Treasury  
 11 Department or the Federal Reserve?  
 12 MR. SHOPE: Objection.  
 13 A. I thought he was with the Treasury.  
 14 Q. So the morning of October 31, 2001, you knew  
 15 that Peter Fisher was a member of the  
 16 Treasury Department?  
 17 A. I think if someone had asked me about him I  
 18 would have said he works for the Treasury.  
 19 Q. I see. And you didn't hear Peter Fisher's  
 20 name mentioned that morning by Steve  
 21 Nothern?  
 22 A. I don't recall hearing his name that day.  
 23 Q. Did Steve Nothern mention anything in this  
 24 statement that he heard from Davis, the bond  
 25 was going to be eliminated, did he mention

1 that the information was nonpublic?  
 2 A. No.  
 3 Q. Did he mention the term "embargo" at all?  
 4 A. No.  
 5 Q. Did you hear the term "embargo" from Steve  
 6 Nothern on October 31, 2001?  
 7 A. No.  
 8 MR. ROSSETTI: If we can go off the  
 9 record.  
 10 THE VIDEOGRAPHER: Off the record  
 11 at 12:02.  
 12 (Short recess.)  
 13 THE VIDEOGRAPHER: The time is  
 14 12:04. This is the end of cassette one. We  
 15 are off the record.  
 16 (Short recess.)  
 17 THE VIDEOGRAPHER: The time is  
 18 12:14. This is the beginning of cassette  
 19 two in the deposition of Mr. David Kennedy.  
 20 We are on the record.  
 21 (Pause.)  
 22 Q. Mr. Kennedy, you indicated that you placed a  
 23 \$25 million trade with Cadogan for the  
 24 bonds. In relation to other bond trades you  
 25 have made for the 30-year Treasury bond,

1 anything about a press release?  
 2 A. No, not that I remember. No.  
 3 Q. Did Steve Nothern mention anything about a  
 4 10 a.m. announcement?  
 5 A. When he stood up and made his statement to  
 6 the trading desk?  
 7 Q. Yes.  
 8 A. No.  
 9 Q. Did he make a statement that there was going  
 10 to be a 10 a.m. announcement at any point  
 11 that morning?  
 12 A. Not that I remember. Again, I only say that  
 13 he may have mentioned something at the  
 14 9 o'clock meeting and I just -- I don't  
 15 remember.  
 16 Q. When Steve Nothern had stood up and made the  
 17 statement that Pete Davis indicated -- he  
 18 heard from Pete Davis that the Treasury was  
 19 going to eliminate the bond, did Steve  
 20 Nothern mention anything else that indicated  
 21 to you that the information that he was  
 22 providing was confidential?  
 23 MR. SHOPE: Objection.  
 24 A. No.  
 25 Q. Did he say anything at that point indicating

1 where was this trade in order of magnitude  
 2 compared to others?  
 3 A. It was one of my larger trades.  
 4 Q. Did you typically trade blocks of \$25  
 5 million in Treasury bonds?  
 6 A. No.  
 7 Q. Why did you place such a large trade on this  
 8 particular occasion?  
 9 A. The answer to your question: I thought the  
 10 news was significant enough to warrant a  
 11 larger position -- a larger single trade.  
 12 In the past, I would have broken the trades  
 13 down into smaller pieces, whereas the -- so  
 14 if you added my trades up throughout a day  
 15 or even two-day period, it would have been  
 16 more than 25 million.  
 17 Q. I see.  
 18 A. Another factor is the funds had grown over  
 19 the last -- it's a two-year period that I  
 20 managed them, so you had to buy increasingly  
 21 larger pieces.  
 22 Q. Did you -- you said Nothern placed a trade,  
 23 you placed a trade, you thought Smith and  
 24 Kurinsky did as well. Did you all place  
 25 individual trades or did you aggregate it

**EXHIBIT G**

**Cited Excerpts from the Deposition Transcript  
of Steven Nothern  
(January 30, 2007)**

Page 1

Volume: I

Pages: 1-221

Exhibits: 1-10

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

(Boston Division)

Civil Action No. 05-CV-10983 (NMG)

-----

UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

STEVEN E. NOTHERN,

Defendant..

-----

Deposition of Steven E. Nothern

January 30, 2007

9:19 a.m. - 4:00 p.m.

Securities and Exchange Commission

33 Arch Street

Boston, Massachusetts

Reporter: Daria L. Romano, RPR/CRR

Page 2

1 APPEARANCES:  
 2 UNITED STATES SECURITIES AND  
 3 EXCHANGE COMMISSION  
 4 (by Erica Y. Williams,  
 5 Assistant Chief Litigation Counsel;  
 6 John J. Rossetti, Jr., Senior Counsel  
 7 Division of Enforcement)  
 8 100 F Street, N.E.  
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 11 williamse@sec.gov  
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 13 for the Plaintiff.  
 14  
 15 FOLEY HOAG, LLP  
 16 (by Nicholas Theodorou, Esq. and  
 17 John Shope, Esq.)  
 18 155 Seaport Boulevard  
 19 Boston, Massachusetts 02210  
 20 (617) 832-3061  
 21 jtheodorou@foleyhoag.com  
 22 jshope@foleyhoag.com  
 23 for the Defendant.  
 24  
 25 ALSO PRESENT: Ian McWilliams, Videographer

Page 4

1 PROCEEDINGS  
 2  
 3 THE VIDEOGRAPHER: Here begins  
 4 videotape number one in the deposition of Steven  
 5 Nothern in the matter of the United States  
 6 Securities Exchange Commission versus Steven  
 7 Nothern in the United States District Court for  
 8 the District of Massachusetts, Civil Action  
 9 05-CV-10983 (NMG).  
 10 Today's date is January 30th, year  
 11 2007. The time on the video monitor is 9:19  
 12 a.m.  
 13 The video operator today is Ian  
 14 McWilliams of New England Trial Services  
 15 contracted by Jones Reporting Company.  
 16 This deposition is taking place at the  
 17 offices of the SEC, 33 Arch Street, Boston,  
 18 Massachusetts.  
 19 Counsel, please voice identify  
 20 yourselves and state whom you represent.  
 21 MS. WILLIAMS: Erica Williams,  
 22 United States Securities and Exchange  
 23 Commission.  
 24 MR. ROSSETTI: John Rossetti for  
 25 the plaintiff, US Securities and Exchange

Page 3

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 22  
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 24  
 25

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1 Commission.  
 2 MR. THEODOROU: Nicholas Theodorou  
 3 for the defendant, Steven Nothern.  
 4 MR. SHOPE: John Shope for the  
 5 defendant, Steven Nothern.  
 6 THE VIDEOGRAPHER: The court  
 7 reporter today is Daria Romano of Jones  
 8 Reporting Company.  
 9 Would the reporter please swear in the  
 10 witness.  
 11  
 12 STEVEN E. NORTHERN DULY SWORN  
 13  
 14 THE VIDEOGRAPHER: Please begin.  
 15 MR. THEODOROU: Before we start, we  
 16 will talk about the stipulations.  
 17 MS. WILLIAMS: Absolutely. The  
 18 same stipulations that we've had in the other  
 19 depositions, all objections, except as to the  
 20 form of the question, are reserved, including  
 21 motions to strike.  
 22 MR. THEODOROU: Reserved until the  
 23 time of trial.  
 24 MS. WILLIAMS: Yes.  
 25 MR. THEODOROU: Fine.

1 Q. Was he talking to all of the people  
2 that you mentioned when he made this statement?

3 A. This is a statement -- this was an  
4 exchange between the two of us. Others could  
5 well have overheard it.

6 Q. So Mr. Cadogan was just talking -- was  
7 directing the statement to you?

8 A. As I recall, we were looking at each  
9 other, maybe six feet apart having that -- and  
10 he added that piece of information that they  
11 were having a quarterly refunding announcement,  
12 and it was at ten o'clock.

13 Q. Was there anyone else that Mr. Cadogan  
14 was directing that statement to beside you?

15 MR. THEODOROU: Objection.

16 A. I'm uncertain who he was trying to  
17 address it to. I know he was addressing it to  
18 me. I was chatting with him. I think he was --  
19 well, it was a general comment he was making, so  
20 I know he was addressing it to me.

21 Q. Do you know if anyone else overheard  
22 the comment that Mr. Cadogan made?

23 MR. THEODOROU: Objection.

24 A. No.

25 Q. Was there a 9 a.m. meeting for the

1 A. Not my personal line but possibly a  
2 direct -- possibly one of the general phone  
3 lines on our phone turret.

4 Q. Who called whom?

5 A. I received the phone call from one of  
6 the dealers.

7 Q. Approximately what time did you  
8 receive this call?

9 A. Some time between 9:30 and ten  
10 o'clock.

11 Q. What was discussed during this call?  
12 I'm sorry.

13 A. Ordinarily some time between 9:30 and  
14 10 of, quarter of.

15 MR. ROSSETTI: 10 of 10?

16 THE WITNESS: Yeah, yes.

17 BY MS. WILLIAMS:

18 Q. What did you discuss during this call?

19 A. The broker was calling me to discuss  
20 that the market had been moving, and he had a  
21 possible explanation for it.

22 He had heard talk that people on the  
23 Chicago Board of Trade thought that the long  
24 bond was going to be cancelled, and he was  
25 imparting that as a possible explanation for why

1 Fixed Income Group on October 31, 2001?

2 A. I don't recall specifically a 9 a.m.  
3 meeting that day.

4 Q. So just to clarify, you don't recall  
5 attending a 9 a.m. meeting that day?

6 A. I don't.

7 Q. Do you recall participating in any  
8 telephone calls that morning, October 31, 2001?

9 A. Yes.

10 Q. What telephone calls do you recall  
11 participating in?

12 A. I remember receiving a phone call from  
13 one of our dealers.

14 Q. Which dealer?

15 A. I don't remember. One of my principal  
16 government coverage guys. I can't remember  
17 specifically which one.

18 Q. Do you recall where the dealer worked?

19 A. I don't recall specifically which  
20 dealer it was. So the answer to that question  
21 is no.

22 Q. What line did this call come in on?

23 A. I don't remember.

24 Q. Would it -- did it come in on a direct  
25 line versus your personal line?

1 the market was drifting up that morning.

2 Q. Do you know who on the Chicago  
3 Board -- excuse me.

4 Do you know how the person that you  
5 were talking to learned about this information  
6 on the Chicago Board of Trade?

7 A. No.

8 Q. Did the person you were talking to  
9 work at this Chicago Board of Trade?

10 A. I don't believe so.

11 Q. Did the person you were talking to  
12 characterize the information, where you called  
13 it talk, on the Chicago Board of Trade as a  
14 rumor?

15 A. Yeah, yes.

16 Q. Do you recall if this person told you  
17 anything else during the conversation?

18 A. That's all I can recall.

19 Q. Prior to this conversation, what, if  
20 anything, had you noticed about the market?

21 A. The market had been ticking up that  
22 morning.

23 Q. And specifically what market are you  
24 referring to?

25 A. The bond market. Specifically, the

1 long bond had been moving up that morning at  
 2 that point in time at least a quarter point with  
 3 eight, 10 ticks.

4 Q. And you said that this call came in  
 5 between 9:30 and 9:50?

6 A. Some time after 9:30. I don't know  
 7 exactly what time.

8 Q. Was it around 9:30?

9 A. I don't know exactly what time.

10 MS. WILLIAMS: I'd like to have  
 11 this marked as Exhibit 9.

12 (Exhibit 9 marked  
 13 for identification)

14 MR. SHOPE: Are there any  
 15 particular numbers you're going to be referring  
 16 to?

17 MS. WILLIAMS: I'm going to be  
 18 talking about page five.

19 BY MS. WILLIAMS:

20 Q. Do you recognize this document,  
 21 Mr. Nothern?

22 A. Yes.

23 Q. What is it?

24 A. It's labeled Defendant Steven E.  
 25 Nothern's Responses to the Plaintiff US

1 the conversation with the broker that morning?

2 A. Yes.

3 Q. What else was discussed?

4 A. Apparently Treasury was going to shift  
 5 to a monthly issuance of five years as opposed  
 6 to a quarterly issuance.

7 Q. And you agree that the conversation  
 8 took place around 9:30 a.m.?

9 A. Yes.

10 Q. Prior to receiving this call, what, if  
 11 anything, had you heard regarding Treasury's  
 12 possible cancellation of a 30-year bond on  
 13 October 31st?

14 A. Prior to October 31, 2001?

15 Q. No, no. On October 31st, prior to  
 16 receiving this call, what, if anything, had you  
 17 heard about the possible cancellation of the  
 18 bond, just on that day?

19 A. That morning?

20 Q. Yes.

21 A. Nothing that I recall.

22 Q. What did you say in response to the  
 23 broker's -- information that the broker gave you  
 24 during this call?

25 A. I don't recall.

1 Securities and Exchange Commission's First Set  
 2 of Interrogatories.

3 Q. If I could refer you to page 15. And  
 4 on the second half of the page, do you see your  
 5 signature there, sir?

6 A. Yes.

7 Q. And it says, "I, Steven E. Nothern,  
 8 state under the penalty of perjury that the  
 9 foregoing responses are true and correct."

10 Did I read that correctly?

11 A. Yes.

12 Q. Okay. On page five, I'm at the first  
 13 line, "Around 9:30 a.m. on October 31, 2001, I  
 14 had a telephone conversation with a bond broker  
 15 who informed me that there was information  
 16 circulating on the Chicago Board of Trade that  
 17 the Treasury was going to cancel the issuance of  
 18 the 30-year bond and that Treasury was going to  
 19 shift to a monthly issuance of five-year bonds  
 20 rather than the quarterly issuance of five-year  
 21 bonds."

22 Did I read that correctly?

23 A. Yes.

24 Q. Does that refresh your recollection at  
 25 all of anything else that was discussed during

1 Q. What was your reaction to this  
 2 information?

3 A. It was twofold. One is here we go  
 4 again. We'd had a similar thing at the  
 5 August refunding.

6 And then it jogged my memory of what  
 7 had happened at the quarterly refunding, which  
 8 there had been wide anticipation at that point  
 9 in time that the treasurer was going to announce  
 10 the cancellation of the 30-year Treasury bond.

11 Their arrangements that they were  
 12 making was that it just didn't make sense to  
 13 continue issuing them.

14 So there was an expectation in  
 15 August that they were going to announce the  
 16 cancellation. So I did remember that.

17 And I did remember also that the  
 18 postmortem on -- because they didn't in fact  
 19 announce that in August, postmortem was that  
 20 they didn't do it because the fellow in charge  
 21 while nominated hadn't yet been confirmed, and  
 22 he might not yet have the -- I guess the sort of  
 23 official ability to stand before the cameras and  
 24 make that sort of an announcement, to the extent  
 25 that he wanted to be the guy making that sort of

1 announcement.

2 Q. Do you recall if you'd received any  
3 calls from brokers prior to the August refunding  
4 conference?

5 A. I don't recall.

6 Q. When you say that a similar thing had  
7 happened at the August refunding, what do you  
8 mean?

9 A. That there was a lot of talk about  
10 whether they were going to do it or not do it in  
11 terms of whether they were going to cancel  
12 issuance of 30 years or not do it. So there was  
13 a lot of speculation about that.

14 This is an issue that had been  
15 outstanding for a long period of time, well over  
16 a year, and it dated to the prior  
17 administration.

18 And in a sense the prior  
19 administration, this is my take on it, that sort  
20 of punted and left the issue to the new  
21 administration.

22 Q. How did you become aware of the talks  
23 surrounding the August refunding?

24 A. It was very -- I don't recall  
25 specifically. It was very widely talked about,

1 just repeat that, please?

2 Q. Sure. I said did you not frequently  
3 get calls from individuals with rumors regarding  
4 what the market was going to do?

5 A. You're confusing me with your notes.

6 Q. Okay. Would you agree that you  
7 frequently got calls from individuals with  
8 rumors regarding what the market was going to  
9 do?

10 A. No. I think it was extremely rare.

11 Q. If I could refer you to Exhibit 2,  
12 page 118.

13 MS. WILLIAMS: And if we could go  
14 off the record and change the tape.

15 MR. THEODOROU: Can we just take a  
16 short break?

17 MS. WILLIAMS: Sure.

18 THE VIDEOGRAPHER: This marks the  
19 end of videotape number two in the deposition of  
20 Steven Nothern.

21 Going off the record, 2:32 p.m.

22 (Recess taken)

23 THE VIDEOGRAPHER: Here begins  
24 videotape number three in the deposition of  
25 Steven Nothern.

1 though.

2 Q. Prior to the August refunding  
3 conference, do you recall there being any  
4 movement in the market on the morning of the  
5 conference?

6 A. I don't.

7 MR. SHOPE: I'm sorry, can I have  
8 that question and answer read back?

9 (Record read)

10 MR. SHOPE: Okay. Thank you.

11 BY MS. WILLIAMS:

12 Q. In the course of your work at MFS, how  
13 often would you receive calls of this nature,  
14 meaning the call that you got from the broker on  
15 the morning of October 31st --

16 MR. THEODOROU: Objection.

17 Q. -- regarding rumors about market  
18 activity?

19 MR. THEODOROU: Objection.

20 A. Rarely.

21 Q. Do you not agree that you frequently  
22 got calls from individuals with rumors regarding  
23 what the market was going to do?

24 MR. THEODOROU: Objection.

25 A. What was your question? Could you

1 On the record, 2:49 p.m.

2 BY MS. WILLIAMS:

3 Q. Mr. Nothern, if you could read to  
4 yourself on Exhibit 2, page 117, line 19 through  
5 page 119, line --

6 A. I'm sorry, page?

7 Q. 117.

8 A. Okay.

9 Q. Line 19 through page 118, line 8, and  
10 let me know when you finished.

11 (Pause)

12 A. Okay.

13 Q. I wanted to refer you to page 118, and  
14 I'm reading line four. "It's just the nature of  
15 business. We have people calling us frequently  
16 pounding the table that they're sure XYZ is  
17 going to happen, or they're sure you should do  
18 XYZ."

19 And I wanted to know what you meant by  
20 that statement.

21 A. We have people -- well, when I worked  
22 in the business there were people calling  
23 frequently, our insurer, the curve was going to  
24 flatten, which is jargon to say that the  
25 Treasury market yields with change in a certain

1 manner, or that the Fed was at the next meeting  
 2 going to tighten 50 basis points, or that the  
 3 next CPI number was going to be .8.

4 You know, so we had people calling in  
 5 all the time who thought that, you know, they  
 6 had an analysis of how the market might react to  
 7 things that they were certain were going to  
 8 occur in their analysis, in their opinion  
 9 certain things were going to happen, and they  
 10 were darn sure of it.

11 At the end of the day, I think I say  
 12 that here, at the end of the day, we as  
 13 portfolio managers have to make our own analysis  
 14 of what we think, you know, the investment  
 15 environment is going to be going forward, and we  
 16 take the responsibility for structuring the  
 17 portfolios appropriately.

18 You can't rely on other people's  
 19 analysis. It's useful input. Often they're  
 20 darn sure, but they can also be darn wrong. And  
 21 if it's wrong, it's your responsibility as a  
 22 portfolio manager.

23 I don't blame them, but they call a  
 24 lot confident that such-and-such is going to  
 25 happen and, you know, you should do

1 such-and-such, you know, as a consequence of it.

2 Q. When you received this call from the  
 3 broker saying that -- relaying the rumor on the  
 4 floor of the Chicago Board of Trade, you said  
 5 that one reaction you had was that this was  
 6 similar to information you heard surrounding the  
 7 August refunding conference; is that right?

8 A. Yes.

9 Q. What, if anything, in your --  
 10 triggered in your mind after you received the  
 11 call from the broker on October 31st as to  
 12 whether Treasury was going to make a refunding  
 13 announcement that day?

14 A. It didn't -- I didn't have any thought  
 15 of a refunding -- quarterly refunding at that  
 16 point in time.

17 Q. How long did the call with the broker  
 18 last?

19 A. I don't remember. It was brief.

20 Q. By "brief," can you give me a  
 21 ballpark?

22 A. Less than two, three minutes.

23 Q. What happened -- what did you do after  
 24 you had this call with the broker?

25 A. As I recall, I was doing portfolio

1 work. I had several portfolios I was working to  
 2 restructure. I was doing trades, primarily  
 3 selling intermediate maturity or short maturity  
 4 notes and bonds in exchange for longer  
 5 maturities.

6 Q. Okay. You mentioned earlier you  
 7 received a voicemail from Peter Davis. Were you  
 8 doing this portfolio work prior to receiving  
 9 that voicemail?

10 A. Yes.

11 Q. Did you sell any intermediate  
 12 securities that day prior to receiving the  
 13 voicemail from Mr. Davis?

14 A. Yes.

15 Q. Did you purchase any longer term  
 16 securities that day prior to receiving the  
 17 voicemail from Mr. Davis?

18 A. No.

19 Q. What do you recall happening next?

20 MR. SHOPE: Next after what?

21 MS. WILLIAMS: He said that after  
 22 the call with the broker, he did some portfolio  
 23 work. I want to know what he recalls doing  
 24 thereafter.

25 A. At some point I was interrupted by

1 Kathy Graham who was our receptionist. She had  
 2 an issue related to a laptop that was going to  
 3 be picked up for servicing by Dell.

4 Q. How were you interrupted by  
 5 Ms. Graham?

6 A. She came to my desk and presented me  
 7 the problem that we were having, and Dell was to  
 8 come pick up this computer for servicing, and  
 9 she explained to me the complexity.

10 After 9/11, vendors -- pick up  
 11 companies were no longer allowed up into the  
 12 building, so the laptop would have to be brought  
 13 down to, I guess, a receiving area of the lobby.

14 Q. Okay. How long was this conversation  
 15 with Miss Graham?

16 A. I don't remember. I'd say it was  
 17 fairly brief, a few minutes.

18 Q. Besides you and Ms. Graham, was there  
 19 anyone else involved in this conversation?

20 A. No.

21 Q. And just to clarify, were you sitting  
 22 at your station on the high grade trading desk  
 23 when you had this conversation with Ms. Graham?

24 A. Yes.

25 Q. What happened after you had this

## **EXHIBIT H**

**Cited Excerpts of Exhibit 3 from the  
Deposition Transcript  
of Bloomberg LP, by Patrick Eldridge  
(November 2, 2006)**

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<HELP> for explanation, WORKING ON DEVELOPMENT SYSTEM SD20 t M-Mkt **TBLT**  
 Enter 2 <GO> to cancel, 99 <GO> for options. 0 <PAGE> to see original sales tkt.

NY 10/31/01 09:45

As of 10/31/01 09:42:02

**H2633**

**GALEN APPROVED TICKET**  
 T 5 <sup>3</sup>/<sub>8</sub> 02/15/31

<b>SELL</b>	65M (m)				
Price	102-24 <sup>1</sup> / <sub>2</sub>	Yield	5.189718	Yield to	02/15/31 at 100.00
Settlement	11/01/01				
A Account	81730A26	81730A26 MASS FINANCIAL SERVICES		Sales 817-9584	

Sales Commission	CodeC	Rate	.150	9750.00 USD	
					↑↑

WIRE	NOE	9584	CONFIRM BY
ORIGIN	BLB2	606311	PARTIAL
FC #	9584	NOE	DELIV INST
SETT TYPES	DAC		DELIV INST

Principal	USD	66,797,656.25	Principal/Agency
Accrued	( 78)	740,523.10	
Transaction Costs		0.00	Settlement Loc FED
Total	USD	67,538,179.35	

View in USD	Rate	1.00000	Invert N (Y/N)	Ticket Number
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Australia 61 2 9777 8600 Brazil 5511 3048 4500 Europe 44 20 7330 7500 Germany 49 69 920410  
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## **EXHIBIT I**

### **Cited Excerpts from the Deposition Transcript of Galen Criqui (September 27, 2006)**

Page 1

1

2                   UNITED STATES DISTRICT COURT  
3                   FOR THE DISTRICT OF MASSACHUSETTS

4

5                   UNITED STATES SECURITIES )  
6                   AND EXCHANGE COMMISSION, )  
7    )  
8                   Plaintiff,                    )  
9    ) Civil Action  
10                   vs.                            ) No. 05-10983 (NMB)  
11    )  
12                   STEVEN E. NOTHERN,            )  
13    )  
14                   Defendant.                    )  
15    -----)

16

17

18

19                   VIDEOTAPED DEPOSITION OF GALEN CRIQUI

20                   New York, New York

21                   Wednesday, September 27, 2006

22

23

24                   Reported by:

25                   Elia E. Carrion

26                   JOB NO. 7530

<p>1</p> <p>2 September 27, 2006</p> <p>3 10:01 a.m.</p> <p>4</p> <p>5 Videotaped Deposition of</p> <p>6 GALEN CRIQUI, held at the offices of</p> <p>7 Davis Polk &amp; Wardwell, 450 Lexington</p> <p>8 Avenue, New York, New York, pursuant to</p> <p>9 Amended Notice, before Elia E. Carrion,</p> <p>10 a Notary Public of the State of New</p> <p>11 York.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1</p> <p>2 A P P E A R A N C E S : (Cont'd)</p> <p>3</p> <p>4 ALSO PRESENT:</p> <p>5 Rudolfo Duran, Legal Video Specialist</p> <p>6 Julian Swearenguin, Merrill Lynch</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1</p> <p>2 A P P E A R A N C E S :</p> <p>3</p> <p>4 UNITED STATES SECURITIES AND EXCHANGE</p> <p>5 COMMISSION</p> <p>6 Division of Enforcement</p> <p>7 Attorneys for Plaintiff</p> <p>8 100 F Street, N.E.</p> <p>9 Washington, D.C. 20549-4010</p> <p>10 BY: ERICA Y. WILLIAMS, ESQ.</p> <p>11 -and-</p> <p>12 JOHN J. ROSSETTI, JR., ESQ.</p> <p>13</p> <p>14 FOLEY HOAG LLP</p> <p>15 Attorneys for Defendant</p> <p>16 Seaport World Trade Center West</p> <p>17 155 Seaport Boulevard</p> <p>18 Boston, Massachusetts 02210-2600</p> <p>19 BY: ROBERT E. TOONE, ESQ.</p> <p>20</p> <p>21 CLIFFORD CHANCE US LLP</p> <p>22 Attorneys for Witness</p> <p>23 31 West 52nd Street</p> <p>24 New York, New York 10019-6131</p> <p>25 BY: KEVIN M. FUMAI, ESQ.</p>	<p>Page 3</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED,</p> <p>3 by and among the attorneys for the</p> <p>4 respective parties herein, that filing</p> <p>5 and sealing be and the same are hereby</p> <p>6 waived.</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that all objections, except as to the</p> <p>9 form of the question, shall be reserved</p> <p>10 to the time of the trial.</p> <p>11 IT IS FURTHER STIPULATED AND AGREED</p> <p>12 that the within deposition may be sworn</p> <p>13 to and signed before any officer</p> <p>14 authorized to administer an oath, with</p> <p>15 the same force and effect as if signed</p> <p>16 and sworn to before the Court.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

2 (Pages 2 to 5)

<p>Page 182</p> <p>1 G. Criqui  2 willing to sell bonds at par 21.  3 It might only be one million, it  4 might be 10 million, they might have 50  5 million offered there.  6 Q. So is it safe to say the difference  7 the bid and the offer is the difference  8 between the price at which someone in the  9 market is going to buy a bond and the price  10 at which someone in the market is going to  11 sell the bond?  12 A. Yes.  13 Q. You had mentioned par in your  14 answer.  15 Could you explain what par is?  16 A. Par, basically, is a hundred. And  17 that's basically when the market, the present  18 yield or interest rate in the marketplace  19 coincides with the coupon --  20 Q. Or interest rate?  21 A. -- on the underlying -- or the  22 interest rate on the underlying whole bond.  23 So for instance, in  24 February of 2001 they issued this 5 and  25 three-eighths at Feb 31 as a 30-year bond.</p>	<p>Page 184</p> <p>1 G. Criqui  2 Q. Mr. Toone asked you to go through  3 the process that you generally went through  4 at Merrill Lynch, when you executed a trade  5 with a customer in Boston like MFS. I want  6 to walk through what actually occurred on  7 October 31st, 2001, regarding this trade of  8 65 par value of 30-year bonds.  9 Could you tell me what you recall  10 on that morning?  11 A. Certainly, certainly. I'll refrain  12 from using the actual time at which it took  13 place, 'cause five years later I can't really  14 remember.  15 But at some point before the  16 expected 10 a.m. refunding announcement,  17 anywhere from 15 to 20 minutes before that,  18 Greg Saint-Pierre used the government's  19 squawk while he's in Boston, I'm in Jersey  20 City on a temporary basis. He used the  21 government squawk, Galen, pick up Boston for  22 a trade.  23 I proceeded to press the Boston  24 direct, hey, Greg. Hey, Galen, offer 65  25 million long bonds to MFS for regular</p>
<p>Page 183</p> <p>1 G. Criqui  2 At the time of this trade, the  3 October -- by October of '01, eight,  4 nine months later, it had rallied roughly 18,  5 19 basis points. So the bond went from 100  6 par to 102, almost 103, 102.24 plus, that's  7 close to 103. That reflects the fact that  8 the market has rallied.  9 So basically par is just when the  10 present yield, present interest rate on the  11 bond is the same as the coupon, the  12 underlying interest rate on the bond when it  13 was originally issued.  14 Q. So when you say par in 20, is that  15 120 ticks --  16 A. Thirty -- yes, that's correct.  17 Q. Which would be 120.32.  18 A. 120 thirty-secondths. Not a  19 hundred -- it's a little less than 101.  20 Q. Right, 132 thirty-secondths --  21 A. Would be 101.  22 Q. Would be 101, okay.  23 Sorry. I know that this is very  24 basic.  25 A. No, I don't even know the answers.</p>	<p>Page 185</p> <p>1 G. Criqui  2 settlement.  3 And I can't exactly recall where  4 the bond market, where the bond was in the  5 broker screens at the time, where the bid and  6 offer was, but it was probably pretty close  7 to where I did the trade. So anyway, let's  8 say there were 102.23, 102.24, which is  9 probably accurate, but I offered him at  10 102.24 plus, a plus concession for me,  11 plus --  12 Q. A plus is --  13 A. A half a tick.  14 Q. -- a half of a thirty-secondth.  15 A. Yes, one 64th.  16 Q. Great.  17 A. I offered a 24 plus, which was  18 fair, market was pretty volatile at the time  19 all that September 11th, and I offered him  20 there. Greg reflects that to the customer,  21 and within a second or two Greg comes back to  22 me, you're done, customer accepts. I go  23 okay, you're done, too, okay, fine. Trade's  24 done. Like millions of trades I've done  25 before.</p>

<p>1 G. Criqui</p> <p>2 Q. At the time that you executed this 3 trade, what, if anything, did you know about 4 treasury's decision to cancel the 30-year 5 bond?</p> <p>6 A. At the time of the execution of the 7 trade, zero.</p> <p>8 Q. What, if any, rumors had you heard 9 that morning about the possibility of the 10 bond being cancelled?</p> <p>11 A. I hadn't heard one word, one rumor.</p> <p>12 Q. What, if any, indication did you 13 get by the market that morning, prior to this 14 trade, that there might be a cancellation of 15 the bond?</p> <p>16 A. Zero.</p> <p>17 Q. Had --</p> <p>18 A. Sorry.</p> <p>19 Q. Had you been looking at the market 20 for the 30-year bond, before you executed 21 this trade?</p> <p>22 A. Oh, yeah.</p> <p>23 Q. What happened -- what did you 24 proceed to do, after you said done?</p> <p>25 A. I -- standard practice is I would</p>	<p>Page 186</p> <p>1 G. Criqui</p> <p>2 roughly 30, 34 million back, at a profit, 3 small profit, maybe a tick, tick and a half 4 lower.</p> <p>5 And then, you know, when he was 6 referring before, you know, basically, what, 7 could you have gotten them all back, why 8 didn't you buy 65 million, that's kind of 9 like, that's why, you know, that's why I have 10 a job. If it was just where you could offer 11 65 bonds and just buy 65 million back, there 12 really wouldn't be a need for me or anyone to 13 do this job, you know. It's not very liquid, 14 there's not a lot of offers, there's not a 15 lot of bids for these things, they move 16 around a lot, not a lot of people want to 17 trade them. So I was lucky to get half of 18 them back; and you know, I still had 15 19 minutes before this refunding announcement. 20 And refunding announcement is, you know, 21 they're not earth-shattering things. They 22 never have been, you know. So you know, 23 maybe, maybe I'll go a little bit short into 24 it.</p> <p>25 But all of a sudden well before the</p>
<p>Page 187</p> <p>1 G. Criqui</p> <p>2 slate the trade, but I'm not required to 3 slate the trade. There's not like a rule 4 that I have to slate it the second it's done.</p> <p>5 Q. When you say "slate the trade" --</p> <p>6 A. Remember, we were talking about 7 that before, when I actually input it into my 8 system, what I did.</p> <p>9 Q. Okay.</p> <p>10 A. You know, where I put sell 65 bonds 11 at 102.24 plus to NOE.</p> <p>12 Q. In the Bloomberg?</p> <p>13 A. In my Bloomberg trading system, 14 yeah. I have to do that at some point, but 15 it's not like I have to do it immediately. 16 It's not like that slate gets done the second 17 we verbally commit to this trade with the 18 customer.</p> <p>19 Q. Okay.</p> <p>20 A. So I don't know exactly when I 21 slated it with regard to this trade. It was 22 probably pretty soon thereafter, but not 23 immediately.</p> <p>24 But what I proceeded to do then was 25 try to get some bonds back, and I did; I got</p>	<p>Page 189</p> <p>1 G. Criqui</p> <p>2 10 o'clock, I'd say about 9:45, 9:46, there 3 was no offer, and it started to tick up a 4 little bit, it got a little, a little weird, 5 you know, but whatever. It happens, you 6 know. And then all of a sudden it got really 7 weird, you know.</p> <p>8 Q. Okay. Let me ask some follow-up 9 questions.</p> <p>10 First, did you proceed to put your 11 slate in while you were still on the phone 12 with --</p> <p>13 A. No.</p> <p>14 Q. -- with Greg Saint-Pierre?</p> <p>15 A. I mean I can't answer that 16 accurately, but most likely not. I usually 17 just don't do that. I guess I'm not that 18 talented, where I can do both at the same 19 time. But I would probably -- I'm not on the 20 phone with Greg for very long, and I don't 21 know if the customer is going to say done 22 either. Offer is 65 bonds, 102.24 plus, 23 done, okay, then, then you're off the phone.</p> <p>24 So if I maybe started to slate it 25 while at the end of the phone call, sure, but</p>

## **EXHIBIT J**

### **Cited Excerpts from the Deposition Transcript of Verizon Business, by Anne Wilson (October 6, 2006)**

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS  
(Boston Division)

----- x  
UNITED STATES SECURITIES AND )  
EXCHANGE COMMISSION, )  
Plaintiff, )  
v. ) Civil Action  
STEVEN E. NOTHERN, ) No. 05-10983  
Defendant. ) (NMG)  
----- x

Washington, D.C.

Friday, October 6, 2006

Video 30(b) (6) Deposition of:

ANNE LAWRENCE WILSON,  
a witness called for examination in the  
above-entitled action, beginning at 10:14 a.m.  
before JOE W. STRICKLAND, RPR, CRR, a notary  
public in and for the District of Columbia, taken  
at the offices of the Securities and Exchange  
Commission, 100 F Street, NE, Washington, DC  
20549, when were present:

Page 2

1 APPEARANCES  
 2 ON BEHALF OF THE PLAINTIFF:  
 3 ERICA Y. WILLIAMS, ESQ.  
 4 JOHN J. ROSSETTI, JR.  
 5 U.S. Securities and Exchange Commission  
 6 100 F Street, NE  
 7 Washington, D.C. 20549-4010  
 8 (202) 551-4450  
 9 williamse@sec.gov  
 10  
 11 ON BEHALF OF THE DEFENDANT:  
 12 ROBERT E. TOONE, ESQ.  
 13 Foley Hoag, LLP  
 14 Seaport World Trade Center West  
 15 155 Seaport Boulevard  
 16 Boston, Massachusetts 02210-2600  
 17 (617) 832-1242  
 18 rtoone@foleyhoag.com  
 19  
 20  
 21  
 22

Page 4

1 EXHIBITS  
 2 WILSON EXHIBIT NO.: PAGE NO:  
 3 No. 1 11  
 4 No. 2 11  
 5 No. 3 26  
 6 No. 4 38  
 7 No. 5 46  
 8 No. 6 54  
 9 No. 7 61  
 10 No. 8 85  
 11 No. 9 109  
 12 No. 10 201  
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 21  
 22

Page 3

1 APPEARANCES (Continued)  
 2 ON BEHALF OF THE WITNESS:  
 3 TODD S. SCHULMAN, ESQ.  
 4 Verizon, Assistant General Counsel  
 5 One Verizon Way  
 6 VC54N079  
 7 Basking Ridge, New Jersey 07920-1097  
 8 (908) 559-5664  
 9 todd.s.schulman@verizon.com  
 10  
 11 ALSO PRESENT: Conway Barker, Videographer  
 12  
 13 C O N T E N T S

14 WITNESS NAME	EXAMINATION
15 ANNE WILSON	
16 By Ms. Williams	6, 180, 199
17 By Mr. Toone	117, 192
18 Afternoon Session	117

Page 5

1 P R O C E E D I N G S  
 2 VIDEOGRAPHER: In the United States  
 3 District Court for the District of Massachusetts,  
 4 in the matter of the United States Securities and  
 5 Exchange Commission versus Steven E. Nothern,  
 6 Case Number 05-10983 (NMG). This is the  
 7 corporate deposition of Verizon by Anne Wilson.  
 8 Today's date is October 6th, 2006. The  
 9 location of the deposition is the U.S. Securities  
 10 and Exchange Commission, 100 F Street, Northeast,  
 11 Washington, D.C.  
 12 Will Counsel please identify themselves  
 13 and state whom you represent.  
 14 MS. WILLIAMS: Erica Williams for the  
 15 Plaintiff, U.S. Securities and Exchange  
 16 Commission.  
 17 MR. TOONE: Robert Toone from Foley  
 18 Hoag, LLP, in Boston, Massachusetts, for the  
 19 Defendant, Steven Nothern.  
 20 MR. SCHULMAN: Todd Schulman, Verizon  
 21 Communications, Inc.  
 22 VIDEOGRAPHER: The court reporter is

1 Q. So a host name corresponds to a  
2 computer, an IP address?

3 A. Exactly. Right. So it was the IP  
4 address that was in the access control list, but  
5 the computer can look one up and find the other.  
6 It knows which belongs to which.

7 Q. And would the host name be unique to a  
8 specific computer at Treasury?

9 A. Not necessarily. They could have gone  
10 through a proxy. But it would definitely be  
11 coming through the Treasury gateway.

12 Q. I want to move down to the next entry  
13 here: "Here are the CMS push logs for USTPRESS"  
14 and then I see a clump of information. What is  
15 all that?

16 A. That would be the logs and it shows the  
17 logs that this user or that for this web site.  
18 It shows when files were updated. They happen in  
19 pairs, each update sequence. There's an update  
20 collection and then do update. That's because a  
21 number of things can happen, happen in a push and  
22 it can take -- it can take several seconds or in

1 some cases even minutes to do a push because the  
2 system has to compare which files are on the two  
3 systems and compare information about those  
4 files.

5 Q. So here which, if any, of these push  
6 logs relate to this particular file, PO749?

7 A. The second set. So starting with the  
8 third entry, USTPRESS, that's the user name of  
9 the web site. And then 9:43 and 23 seconds is  
10 the beginning of the process. And then 9:43 and  
11 28 seconds is the end of the process.

12 Q. When you say the beginning of the  
13 process and that started at 9:43 and 23 seconds,  
14 what do you mean?

15 A. Of the update process. I think I  
16 referred before the user clicks a button and says  
17 I want to push these documents to production.  
18 And then it does the -- well, first of all it has  
19 to get the Kerberos ticket and the two servers  
20 have to open up that encrypted line of  
21 communication. And then there is a comparison of  
22 which files are on each of the two servers and

1 the date, time, size of those files. And CMS  
2 decides which files it's going to copy over and  
3 then it does the copy.

4 Q. Does the program do this automatically  
5 when the person clicks whatever they need to do  
6 to say push?

7 A. Clicks the button; right.

8 Q. What is this fourth entry here, the  
9 9:43:28? What does that signify?

10 A. That would be when the process was  
11 completed. Or when that file was actually moved.

12 Q. At what time would someone from the  
13 public who logs onto the Treasury production  
14 server via the Internet be able to view PO749?

15 MR. TOONE: Objection.

16 THE WITNESS: 9:43 and 28 seconds.

17 BY MS. WILLIAMS:

18 Q. And why do you say that?

19 A. Because this log indicates that that's  
20 when the CMS system was complete with its  
transfer, which would mean that the file was then  
22 on the production server.

1 Q. Would it have been possible at 9:43 and  
2 23 seconds to view the information on the  
3 production server?

4 A. No.

5 Q. Why not?

6 A. The process was just starting. The  
7 file wouldn't have been copied yet. And those  
8 other things had to happen first.

9 Q. If you could go down below the copy --  
10 well, first, this -- these entries from the log,  
11 which server would those have come from?

12 A. I would have looked for them myself on  
13 the staging server. That's where the interface  
14 was for the customers to view these logs.

15 Q. Was it also available on the production  
16 server?

17 A. It may have been. I personally don't  
18 know.

19 Q. Okay. Below this information with the  
20 CMS push logs, Mr. Harris writes some other  
21 information interpreting the logs. Do you see  
22 that?

1 A. Uh-huh.  
 2 Q. Is there anything in that that you  
 3 disagree with?  
 4 A. No, not at all. This is he's pulled  
 5 out, you know, just copied bits and pieces of  
 6 it. What -- what looks odd is that this  
 7 101103107 is -- computers have a different way of  
 8 keeping time. They don't use month, day, year.  
 9 So it's -- I don't know what the algorithm is.  
 10 It is like a number of seconds past some start  
 11 date. So he's converted this numeric set of  
 12 strange numbers into the actual year, month, and  
 13 date that they convert to.  
 14 Q. Was it possible for someone to type in  
 15 WWW.TREAS.GOV and connect to Treasury's staging  
 16 server?  
 17 A. No.  
 18 Q. Why not?  
 19 A. Because that entry would have only been  
 20 made for the production system.  
 21 Q. Were there any other WWW. type  
 22 addresses that connected to the production

1 server? At Treasury?  
 2 A. Yes. The WWW.USTREAS.GOV and  
 3 WWW.TREASURY.GOV.  
 4 Q. And would all of those connect to the  
 5 same IP address on the production server?  
 6 A. Right. There would have been multiple  
 7 domain name entries, all with the same IP  
 8 address.  
 9 Q. What is a domain name?  
 10 A. Domain name is that host's name. It  
 11 refers to the DNS, domain name system, which is  
 12 another protocol of how the Internet works. And  
 13 there are servers, databases around the world  
 14 that match up domain names with IP addresses.  
 15 And it's the domain name that you're going to  
 16 write in your web browser, because people  
 17 wouldn't be expected to know what the IP  
 18 addresses are. They're a little too confusing.  
 19 Q. Do you know if Treasury's staging  
 20 server had a domain name in 2001?  
 21 A. No, I don't know. We did not create  
 22 one for that.

1 Q. UUNET didn't create one?  
 2 A. Right.  
 3 Q. So just to clarify, an IP address like  
 4 Treasury's production server's IP address could  
 5 have multiple domain names --  
 6 A. Uh-huh.  
 7 Q. -- that pointed to it?  
 8 A. Right.  
 9 Q. Are you familiar with the term network  
 10 time protocol?  
 11 A. Yes.  
 12 Q. What is it?  
 13 A. It's a standard throughout the  
 14 Internet. It's a method of synchronizing clocks  
 15 that's considered very robust and redundant, so  
 16 that no one is depending on a single clock but on  
 17 a network of clocks going back to very  
 18 authoritative sources.  
 19 Q. When you say it's a standard throughout  
 20 the Internet, what do you mean?  
 21 A. It's common, accepted practice that the  
 22 official clocks from U.S. Naval Observatory or

1 the National Institute of Standards and  
 2 Technology distribute their time via NTP. And it  
 3 syncs up with the universal coordinated time  
 4 worldwide. So it's universally accepted.  
 5 Q. Did UUNET have an NTP protocol in place  
 6 for its customer servers?  
 7 A. Yes, we did. That was a standard  
 8 package that was installed on all of our customer  
 9 boxes.  
 10 Q. Was that true in the fall of 2001?  
 11 A. Yes, it was.  
 12 Q. Did UUNET have an NTP protocol in place  
 13 for the Treasury servers that it maintained?  
 14 A. Yes.  
 15 Q. Could you explain how the NTP --  
 16 actually, before you do that, let me mark this  
 17 document as an exhibit.  
 18 (Wilson Exhibit No. 8 was  
 19 marked for  
 20 identification.)  
 21 BY MS. WILLIAMS:  
 22 Q. Ms. Wilson, do you recognize this

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1 protocol was running at the time?  
 2 A. He would have done a process command to  
 3 see what processes were running.  
 4 Q. Was there any process that Mr. Harris  
 5 could have performed on November 1st at 12:40  
 6 p.m. as to whether the network time protocol was  
 7 running correctly on the morning of October 31st,  
 8 2001?

9 MS. WILLIAMS: Objection.

10 THE WITNESS: No.  
 11 BY MR. TOONE:

12 Q. I'm sorry?

13 A. Perhaps log files may have shown that.

14 Q. Are you aware of any evidence showing  
 15 that -- showing whether the network time protocol  
 16 was running correctly on October 31st, 2001?

17 A. Not direct -- I'm not sure. How did  
 18 you phrase that?

19 Q. Are you aware any of evidence that  
 20 shows whether or not the network time protocol  
 21 was functioning correctly on October 31st, 2001?

22 MS. WILLIAMS: Objection.

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1 3:15:20.  
 2 (Recess.)  
 3 VIDEOGRAPHER: On the record at  
 4 3:33:58.  
 5 BY MR. TOONE:  
 6 Q. Ms. Wilson, I'm done with all my  
 7 questions for now. Thank you very much.  
 8 FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF  
 9 BY MS. WILLIAMS:  
 10 Q. I have a couple of follow-up  
 11 questions.  
 12 A. Okay.  
 13 Q. Mr. Toone asked you some questions  
 14 about the ability of someone in the public to  
 15 view content on Treasury's staging server?  
 16 A. Uh-huh.  
 17 Q. What would a person need to know to  
 18 view, rather than post, content on Treasury's  
 19 staging server?  
 20 A. They would need to know that address.  
 21 The IP address of that staging server.  
 22 Q. And how would someone in the public

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1 THE WITNESS: I have no evidence to the  
 2 contrary. And the server was working. By  
 3 inference, it was.

4 BY MR. TOONE:

5 Q. What do you mean the server was  
 6 working?

7 A. CMS was working. The server was up and  
 8 responding. The operating system was running and  
 9 NTP is part of the operating system.

10 Q. So because the other functions were  
 11 working, it's possible to conclude that the  
 12 network time protocol was also working?

13 A. It certainly should have been.

14 Q. It should have been, but can you say  
 15 for sure that it was?

16 MS. WILLIAMS: Objection.

17 THE WITNESS: Not for absolutely sure,  
 18 but with a high degree of certainty, yes.

19 MR. TOONE: Could we take a short  
 20 break. I would like to review my notes one more  
 21 time.

22 VIDEOGRAPHER: Off the record,

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1 know the IP address of a staging server?  
 2 MR. TOONE: Objection.  
 3 THE WITNESS: I don't know how they  
 4 could come by that information.  
 5 BY MS. WILLIAMS:  
 6 Q. Why do you say that?  
 7 MR. TOONE: Objection.  
 8 THE WITNESS: Because to my knowledge,  
 9 it was not part of the DNS record or announced in  
 10 that way.  
 11 BY MS. WILLIAMS:  
 12 Q. When you say not part of the DNS  
 13 record, what do you mean?  
 14 A. That I know of no -- well, even to know  
 15 the IP address they would have to know the domain  
 16 name, or they would have to know the domain name  
 17 to know the IP address. They would have to know  
 18 that address. It wouldn't have been posted on  
 19 the Treasury web site, for example.  
 20 Q. I think you testified that you don't  
 21 know if there was a domain name for Treasury's  
 22 staging server?

1 files posted on the staging server were available  
2 on the Internet?

3 MS. WILLIAMS: Objection.

4 THE WITNESS: Yeah. I mean it said  
5 that, you know, if you want to protect your  
6 content, you can do XYZ to keep others from  
7 viewing it.

8 BY MR. TOONE:

9 Q. Did you produce those documents to the  
10 S.E.C.?

11 A. No, I don't believe we discussed that.

12 Q. Are those documents still available?

13 A. Perhaps.

14 Q. Would it surprise to you learn that  
15 Treasury's senior counsel for technology policy,  
16 a man named Steven Vagle, believed that files  
17 transferred to the staging server were not  
18 available on the Internet?

19 MS. WILLIAMS: Objection.

20 MR. SCHULMAN: Objection.

21 BY MR. TOONE:

22 Q. You can answer if you understand the

1 these files off the staging server on the  
2 Internet?

3 A. They would have -- to view the files?  
4 Q. Yes.

5 A. They would have to know the IP address  
6 of the staging server. They would have to -- if  
7 a domain name existed, they could use that. But  
8 that's only if that existed. They'd have to know  
9 one or the other. And you know depending on how  
10 the files were indexed, they might have to know  
11 specific file name to view that file.

12 Q. What if Treasury had additional  
13 security protocols?

14 MR. TOONE: Objection.

15 THE WITNESS: In that case, they would  
16 either have had to enter a user name password or  
17 come from a specific network or range of IP  
18 addresses.

19 BY MS. WILLIAMS:

20 Q. Did UUNET advertise which of its  
21 clients had staging servers?

22 A. No.

1 question.

2 A. I don't know. I mean I have no  
3 opinion.

4 Q. Do you know whether Treasury employees  
5 received any specific training on this aspect of  
6 the staging server?

7 MS. WILLIAMS: Objection.

8 THE WITNESS: I don't know.

9 MR. TOONE: That's all I have.

10 MS. WILLIAMS: I have a couple  
11 follow-ups.

12 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF

13 BY MS. WILLIAMS:

14 Q. You never worked at the Department of  
15 Treasury, did you Ms. Wilson?

16 A. No.

17 Q. You don't know Treasury's policies and  
18 procedures?

19 A. No.

20 Q. Mr. Toone was asking you about files on  
21 the staging server being available on the  
22 Internet. What would someone need to do to get

1 Q. How would someone in the public know  
2 that Treasury had a staging server at UUNET?

3 MR. TOONE: Objection.

4 THE WITNESS: It should not know. That  
5 was considered proprietary information. Any  
6 information about our customers was tightly held.

7 MS. WILLIAMS: I'd like to mark this as  
8 Exhibit 10.

9 (Wilson Exhibit No. 10 was  
10 marked for  
11 identification.)

12 BY MS. WILLIAMS:

13 Q. Have you seen this document before  
14 Ms. Wilson?

15 A. Yes.

16 Q. What is it?

17 A. It's a snapshot of a trouble ticket  
18 from the Remedy Trouble Ticket Database.

19 Q. Do you know how this document was  
20 generated?

21 A. I myself accessed this ticket from the  
22 Remedy database.

## **EXHIBIT K**

### **Cited Excerpts from the Deposition Transcript of Bloomberg LP, by Darin Langone (November 3, 2006)**

Page 1

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS  
(Boston Division)

-----x

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

Civil Action  
No. 05-10983

-against-

STEVEN E. NOTHERN,

Defendant.

-----x

VIDEOTAPED DEPOSITION OF DARIN LANGONE

New York, New York

Friday, November 3, 2006

Reported by:  
DOROTHY H. LONDON, RPR

Page 2

1 November 3, 2006  
 2 1:09 p.m.  
 3  
 4  
 5 VIDEOTAPED DEPOSITION OF DARIN LANGONE, held at  
 6 the offices of Securities and Exchange Commission, 3  
 7 World Financial Center, New York, New York, pursuant  
 8 to 30(b)(6) Notice, before Dorothy H. London, a  
 9 Registered Professional Reporter and Notary Public  
 10 of the State of New York.

Page 4

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2	WITNESS	EXAMINATION BY	PAGE
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4	DARIN LANGONE	Ms. Williams	6
5		101	
6			
7		Mr. Toone	63
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9		EXHIBITS	
10	LANGONE		
11	DESCRIPTION	PAGE	
12	1 Notice of Deposition and	10	
13	Subpoena for 30(b)(6)		
14	deposition from Bloomberg		
15	LP		
16	2 Configuration files for	31	
17	Server N010		
18	3 "A Survey of the NTP	86	
19	Network"		
20			
21	REQUEST FOR DOCUMENTS		
22	PAGE	LINE	
23			
24	15	17	
25			

Page 3

1 APPEARANCES:  
 2  
 3 U.S. SECURITIES AND EXCHANGE COMMISSION  
 4 Attorneys for Plaintiff  
 5 100 F Street, N.E.  
 6 Washington, D.C. 20549  
 7  
 8 BY: ERICA Y. WILLIAMS, ESQ.

9  
 10 FOLEY HOAG, LLP  
 11 Attorneys for Defendant  
 12 Seaport World Trade Center West  
 13 155 Seaport Boulevard  
 14 Boston, Massachusetts 02210  
 15 BY: ROBERT E. TOONE, ESQ.

16  
 17 BLOOMBERG  
 18 Attorneys for Witness  
 19 731 Lexington Avenue  
 20 New York, New York 10022  
 21 BY: CATHERINE MARTEN, ESQ.

22  
 23 ALSO PRESENT:  
 24  
 25 JUAN TORRES, VIDEOGRAPHER

Page 5

1 THE VIDEOGRAPHER: This is Tape No. 1 of  
 2 the videotaped deposition of Mr. Darin Langone in  
 3 the matter of the United States Securities and  
 4 Exchange Commission versus Steven Nothern in the  
 5 United States District Court for the District of  
 6 Massachusetts.  
 7 This deposition is being held at the SEC  
 8 offices, 3 World Financial Center, New York, New  
 9 York on November 2, 2006 at approximately 1:09 p.m.  
 10 My name is Juan Torres, and I'm the legal video  
 11 specialist. The court reporter is Dorothy London.  
 12 Will counsel please introduce themselves  
 13 beginning with the party noticing this proceeding?  
 14 MS. WILLIAMS: Erica Williams for the  
 15 plaintiff, United States Securities and Exchange  
 16 Commission.  
 17 MR. TOONE: Robert Toone from Foley Hoag  
 18 in Boston for the defendant, Steven Nothern.  
 19 MS. MARTEN: Catherine Marten, counsel to  
 20 Bloomberg LP.  
 21 THE VIDEOGRAPHER: Will the court reporter  
 22 please swear in the witness?  
 23  
 24 ooo  
 25

1 is used is it gives all the computers in this  
 2 particular grouping on a network the ability to keep  
 3 time with one another. It's almost as if -- you  
 4 know, we all wear watches. You know, some people's  
 5 individual watches are fast. Some people's  
 6 individual watches run slow. You know, the watch on  
 7 your wrist might be easily equated to the hardware  
 8 clock that's on your motherboard, so if you're going  
 9 to interact, if you're a computer and you're going  
 10 to interact with some other computers and then maybe  
 11 a clock is a little slower or faster, you're going  
 12 to have a difficult time doing these transactions.  
 13 You know, I might go to you and say hey, you know,  
 14 give me this and you give me that and I give you  
 15 something else, and we look at our watch to try to  
 16 synchronize, but there's differences.

17 But if somehow our watches were  
 18 interconnected and the statefulness of time was  
 19 maintained between two of them, we wouldn't have  
 20 this difficulty, and that's probably why it is that  
 21 NTP is utilized between systems on a network, and I  
 22 think it's going to also get into why it is that  
 23 there's differences between why a computer has a  
 24 hardware clock and why if it does have a hardware  
 25 clock, why it is that we need this NTP thing, as

1 Configuration files for Server  
 2 N010, marked for identification,  
 3 as of this date.)  
 4 BY MS. WILLIAMS:  
 5 Q. Mr. Langone, if you could take a minute  
 6 and review Exhibit 2.  
 7 A. (Perusing.)  
 8 Q. Do you recognize what's been marked as  
 9 Exhibit 2?  
 10 A. Yes, I do.  
 11 Q. What is it?  
 12 A. These are configuration files that would  
 13 have been used at the time on these machines to --  
 14 for the NTP process.  
 15 Q. When you say "these machines," what do you  
 16 mean?  
 17 A. Oh, N010.  
 18 Q. If I could refer you to the document  
 19 that's immediately behind Section 3(a), so that  
 20 would be the fourth page of the exhibit.  
 21 A. Yes.  
 22 Q. Do you see that fourth page of the Exhibit  
 23 2?  
 24 A. Yes.  
 25 Q. Yes, okay. What is -- have you seen this

1 well.  
 2 Q. Without getting into too many technical  
 3 details, how did NTP or how did NTP affect the  
 4 accuracy of clocks on the TOMS system that Bloomberg  
 5 maintained in 2001?

6 MR. TOONE: Objection.

7 Q. You can answer.

8 A. Well, NTP maintains the statefulness of  
 9 the clocks on the TOMS system and every other system  
 10 that we have by basically going out on to the  
 11 Internet at that time and being in sync with some of  
 12 the well known atomic clocks, GPS clocks that are  
 13 out there for that specific purpose.

14 So it might have been a server for the  
 15 TOMS system or any other server for that matter.  
 16 It's really a generic thing. So that system would  
 17 be up and running, and it would essentially be  
 18 synchronizing its time with one of the well known  
 19 clocks on the Internet.

20 Q. Are you familiar with the NTP  
 21 configuration for Server N010?

22 A. Yes, I am.

23 MS. WILLIAMS: I'd like to have this  
 24 marked as Exhibit 2.

25 (Langone Exhibit 2,

1 page before?  
 2 A. Yes, I have.  
 3 Q. What is this?  
 4 A. This is the configuration file that would  
 5 have been on N010 for its NTP configuration.  
 6 Q. Is this a document that you printed?  
 7 A. Yes.  
 8 Q. Is it a true and correct copy of the  
 9 document that you generated?  
 10 A. Yes, it is.  
 11 Q. At the top of the document under the --  
 12 the sixth line down, I see a pound sign and then  
 13 less than sign and at and some other information and  
 14 then ntp.conf.proto and then some additional  
 15 information. Do you see that line?  
 16 A. Yes, I do.  
 17 Q. What does that line mean?  
 18 A. Well, this denotes this file as being the  
 19 NTP configuration prototype.  
 20 Q. When you say "NTP configuration  
 21 prototype," what is that?  
 22 A. Well, when the system would have come from  
 23 the vendor, the operating system, that is, it would  
 24 have come with this file, and it probably would have  
 25 been blank. So this serves as the prototype. It's

**EXHIBIT L**

**Memorandum of Activity concerning the  
Treasury Office of Inspector General's  
Interview of Jill Cetina  
(November 7, 2001)**



## MEMORANDUM OF ACTIVITY

<b>Type of Activity:</b> <input checked="" type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Contact <input type="checkbox"/> Records Review <input type="checkbox"/> Other (Describe): _____	<b>Case Number:</b> 2002-0104 <b>Date:</b> November 7, 2001 <b>Time:</b> 4:30 p.m.	<b>Conducted by (Name, Title, and Signature):</b> Michael Knorr, Investigator <i>Michael Knorr</i>
<b>Subject of Activity:</b>  Jill Cetina International Economist Office of Foreign Exchange Operations Department of the Treasury Washington, DC		<b>Location of Activity:</b>  Department of the Treasury Office of General Counsel 1500 Pennsylvania Avenue, NW Washington, DC

On the above date and time, the above listed subject was interviewed by attorneys Andrew Sporkin (202/942-4800) and Rosemary Filou (202/942-4768) of the Division of Enforcement, United States Securities and Exchange Commission (SEC) in coordination with Treasury, Office of General Counsel and the Office of Inspector General (OIG). Interviews of Treasury employees were conducted because of an allegation that someone may have prematurely released market sensitive information about the government's decision to suspend issuance of the Treasury 30-year bond, thus affecting trading activities in government securities.

The government's decision to suspend issuance of the 30-year bond was announced by Peter R. Fisher, Department of the Treasury, Under Secretary for Domestic Finance, during the quarterly funding meeting press conference held at Treasury between 9:00 a.m. and 9:25 a.m. on October 31, 2001. The announcement was embargoed for release until 10:00 a.m. Treasury, however, prematurely posted Fisher's statement on their Web site, where it appeared at 9:43 a.m.

Jill Cetina stated she has worked as an international economist for Treasury for the past four years. She provides market analysis to Treasury through contacts with bond traders and brokerage market strategists. She said on October 31, 2001, she was on duty at 5:30 a.m. working the "market room." She said she became aware of the decision to suspend sales of the 30-year bond approximately 30 minutes prior to the official announcement.

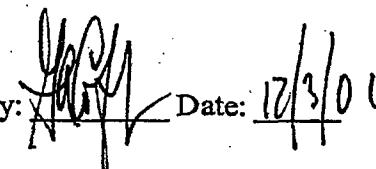
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## MEMORANDUM OF ACTIVITY

Cetina was asked if she had received any earlier information of the elimination of the 30-year bond. She said she had heard speculation, on the part of bond market strategists, that it might be eliminated. Specifically, she said, a week or two prior to the announcement, she spoke with Drew Matus, a market strategist for Lehman Brothers Inc. in New York. She said that Matus predicted that Treasury would eliminate the 30-year bond. She thought he was "going out on a limb with that type of speculation."

Cetina said she was monitoring the bond market at the time the announcement on the 30-year bond was made. She said she was aware of the early Web site posting. She said she first noticed price increases on the long bond at 9:35 a.m. She said at 10:00 a.m., the time of the official announcement, there was a "big rally" in the bond price.

Cetina said when she first heard of the elimination of the 30-year bond, 30 minutes prior to the announcement, she was aware it was market sensitive information. She said she was aware of the embargo and added that she spoke to no one between 9:00 a.m. and 10:00 a.m. on October 31, concerning the suspension of sales of the 30-year bond.

Reviewed by:  Date: 10/30/01

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Date Printed: 11/30/01  
Form 01-09

Office of the Inspector General – Investigations  
Department of the Treasury

**EXHIBIT M**

**Cited Excerpts from the Deposition Transcript  
of Brian Collins  
(May 12, 2006)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - - X

UNITED STATES SECURITIES AND :  
EXCHANGE COMMISSION, :  
Plaintiff, :  
v. : Civil Action No.

STEVEN E. NOTHERN, : 05-10983 (NMG)

Defendant. :  
- - - - - X

Washington, D.C.

Friday, May 12, 2006

Videotape Deposition of BRIAN COLLINS, a witness herein, called for examination by counsel for the Defendant in the above-entitled matter, pursuant to notice and subpoena, the witness being duly sworn by PENNY M. DEAN, a Notary Public in and for the District of Columbia, taken at the law offices of Foley Hoag, LLP, 1875 K Street, NW, Washington, D.C., at 10:44 a.m., Friday, May 12, 2006, and the proceedings being taken down by Stenotype by PENNY M. DEAN, RPR, and transcribed under her direction.

## 1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 ERICA Y. WILLIAMS, ESQ.

5 JOHN J. ROSSETTI, JR., ESQ.

6 U.S. Securities and Exchange Commission

7 100 F Street, NE

8 Washington, D.C. 20549-4010

9 (202) 551-4450

10 (202) 551-4819

11

12 On behalf of the Defendant:

13 JOHN A. SHOPE, ESQ.

14 Foley Hoag, LLP

15 Seaport World Trade Center West

16 155 Seaport Boulevard

17 Boston, MA 02210-2600

18 (617) 832-1000

19

20 On behalf of the witness:

21 JAMES RITTINGER, ESQ.

22 Satterlee, Stephens, Burke &amp; Burke

23 230 Park Avenue

24 New York, NY 10169-0079

25 (212) 818-9200

## 1 ALSO PRESENT:

2 Rick Sanborn, Videographer

3

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## 1 C O N T E N T S

2 WITNESS EXAMINATION BY COUNSEL FOR

3 BRIAN COLLINS PLAINTIFF DEFENDANT

4 By Mr. Shope 6

5 By Ms. Williams 72

6

## 7 E X H I B I T S

8 COLLINS EXHIBIT NO. PAGE NO.

9 1 Subpoena 10

10 2 Letter to Collins from SEC 59

11 3 Document containing page Bates numbered 62

12 SEC NOTH 00103667

13 4 Unidentified document 65

14 5 Press announcement hand out 65

15 6 Letter recounting call to Smith 66

16

17

18

19

20

21

22

23

24

25

1 THE VIDEOGRAPHER: In the United States

2 District Court for the District of Massachusetts, in

3 the matter of the United States Securities and

4 Exchange Commission versus Steven E. Northern -- no,

5 sorry, Nothern, civil action number 05-10983 (NMG).

6 This is the deposition of Brian Collins. The date is

7 May 12th, 2006. The location of the deposition is

8 the offices of Foley Hoag L.L.P., 1875 K Street,

9 Northwest, Washington, D.C.

10 Noticing the deposition on behalf of the

11 defendant is John Shope, Esquire. Appearing on

12 behalf of the SEC are Erica Williams, Esquire, and

13 John Rossetti, Esquire. Appearing on behalf of the

14 witness is James Rittinger, Esquire.

15 The officer before whom this videotaped

16 deposition is taken and sworn by is Penny Dean. The

17 video camera operator is Rick Sanborn, representing

18 Alderson Reporting Company, 1111 14th Street

19 Northwest, Washington, D.C. This videotaped

20 deposition commences at 10:44:54 a.m. Please swear

21 in the witness.

22 Whereupon,

23 BRIAN COLLINS,

24 residing at 2405 Dexter Avenue, Silver Spring,

25 Maryland, was called as a witness by counsel for the

1 Q. I believe you testified before that you  
 2 recalled receiving a press announcement hand out on  
 3 October 31, 2001, correct?

4 A. Yes.

5 Q. As best you recall, is Exhibit 5 a copy of  
 6 what you received on that date?

7 A. It looks very much like it.

8 (Exhibit No. 6 was marked for  
 9 identification.)

10 BY MR. SHOPE:

11 Q. And just to save time, Mr. Collins, you're  
 12 welcome to read the entire Exhibit 6, but I'm going  
 13 to be asking you about the bottom paragraph on the  
 14 first page, and then the top of the second page. And  
 15 just let me know when you're ready. All set?

16 A. Yes.

17 Q. First of all, Exhibit 6 recounts a call  
 18 from you to Janice Smith. And the letter, which is  
 19 Exhibit 6, states that this occurred approximately  
 20 9:35 a.m., is that consistent with your own memory?

21 A. No.

22 Q. That your call to her was some time before  
 23 10 o'clock that day, correct?

24 A. Correct.

25 Q. So when you say it's not consistent with

1 your memory, what's -- what are you disagreeing with?  
 2 This is specifically on the 9:35 a.m. piece, we'll  
 3 break it down into bits and pieces.

4 MR. RITTINGER: I object to the use of the  
 5 word or the form of disagreeing. I don't think it's  
 6 a disagreement, I think it's just a different  
 7 recollection.

8 BY MR. SHOPE:

9 Q. Okay, I'm asking -- basically, what I'm  
 10 asking for is just to get as best your memory I can.  
 11 And I recognize that this was five years ago, so I  
 12 understand that we're testing your memory to the  
 13 limit here. I just -- what I'm trying to get at is,  
 14 what's your best memory as to when it was that you  
 15 called Ms. Smith at Fannie Mae?

16 A. I would guess it would had to have been at  
 17 least about 10:45 or 10:50. I mean 9:45 to 9:50.

18 Q. And you're basing that on what?

19 A. I'm basing it on the fact that I walked  
 20 back from the Treasury Department, got into any  
 21 office, I think I as I mentioned I talked to  
 22 Mr. Muolo for at least a minute or something. I sat  
 23 down and tried to write something first, and it just  
 24 didn't have much pizzazz to it. I went over and  
 25 looked at the TV, CNBC. And then I put -- I figured

1 I'd try to call somebody, see if I can get some  
 2 comment.

3 Q. By the way, was there a reason why it was  
 4 Fannie Mae in particular?

5 A. They are a big mortgage company.

6 Q. And I apologize if I asked you this  
 7 before, but had you heard anything about the possible  
 8 suspension of the long bond before October 31, 2001?

9 A. I can't recall.

10 Q. Now, there's reference here to a Lesia or  
 11 Lesia Bullock, media relations manager; do you see  
 12 that?

13 A. Um-hum, yes.

14 Q. Do you know Ms. Bullock?

15 A. I'm not sure, I don't think so.

16 Q. And so did you have any awareness that she  
 17 was at all privy to what you were saying on October  
 18 31, 2001?

19 A. No.

20 Q. Okay, okay. And I take it nobody from  
 21 Fannie Mae ever called you back with any kind of a  
 22 comment, right?

23 A. No.

24 Q. Did you make any notes of your -- the  
 25 message that you had left for Ms. Smith?

1 A. No.

2 Q. Did you make any notes of your discussion  
 3 with Mr. -- with your executive editor?

4 A. No.

5 Q. Okay. And did you take any notes at the  
 6 press conference itself?

7 A. Geez, I don't remember. I don't think I  
 8 even got a chance to sit down.

9 Q. Was that because it was standing room only  
 10 in the room where the press conference was being  
 11 conducted?

12 A. I know I was in the back, that's for sure.

13 Q. So in other words, you came in late, you  
 14 were in the back, and at least there weren't any  
 15 chairs that were in close proximity to somebody  
 16 coming in at the back?

17 A. I just don't remember sitting down.

18 Q. But, I mean -- well, let me put it this  
 19 way, would it have been your preference to sit if  
 20 there had been an open chair that was readily  
 21 accessible?

22 MR. ROSSETTI: Objection.

23 THE WITNESS: I don't know. Usually I do  
 24 sit down at press conferences.

25 BY MR. SHOPE: